

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

WILLIAM STEFANIAK and *
JANICE STEFANIAK, *
Plaintiffs *

CIVIL ACTION NO. 05-11465-MLW

v. *

VOYAGER III, LLC, *
WATER TRANSPORTATION *
ALTERNATIVES, INC., *
Defendants. *

**MOTION TO COMPEL THE DEFENDANTS, VOYAGER III, LLC AND WATER
TRANSPORTATION ALTERNATIVES, INC., TO RESPOND TO PLAINTIFF,
WILLIAM STEFANIAK’S, DISCOVERY REQUESTS**

The Plaintiff, William Stefaniak (“Stefaniak”), moves this honorable court, pursuant to Rule 37(a) of the Federal Rules of Civil Procedure, to compel the Defendants, Voyager III, LLC (“Voyager”) and Water Transportation Alternatives, Inc. (“WTA”), to answer all of the interrogatories and produce all the requested documents within ten (10) days of the allowance of this motion. Pursuant to Fed.R.Civ.P. 37(a)(2)(A) and LR 37.1, Stefaniak has repeatedly conferred with counsel for Voyager and WTA. *See* Plaintiff’s Certification, *infra*.

This dispute arises out of Defendants’ failure to adequately respond and/or respond at all to Stefaniak’s properly served written discovery requests. In the spirit of cooperation, Stefaniak granted the defense an extension that was allowed to expire. Stefaniak was then forced to file a motion to compel and made it clear therein that all objections had been waived. Based upon Defendants’ representations that they would serve proper responses, Stefaniak, again in the spirit of cooperation, withdrew his motion. Later, Defendants served undated and unsigned responses containing multiple objections, inappropriate privileges, evasive answers and outright refusals.

After several attempts to solve the dispute, Defendants submitted a supplementation that failed to correct their prior submissions and, in a letter, stated their “unwillingness” to supplement five specific interrogatories that the parties had discussed at length. Stefaniak, anxious to schedule and conclude the Defendants’ depositions, now seeks the court’s assistance in obtaining the remainder of the discovery responses owed to him and hereby conveys his concern regarding the court-ordered discovery deadline (March 31, 2007) and his plea that this deadline not be extended unless absolutely necessary.

BRIEF BACKGROUND:

1. The Discovery Deadline in this matter is March 31, 2007. *See* Scheduling Order, Document 13.
2. The parties agreed to serve all written discovery requests by September 15, 2006 and to conclude all fact witness depositions by December 29, 2006. *See* Proposed Joint Scheduling Order, Document 11.
3. Stefaniak served Defendants with Interrogatories and Requests for Production of Documents on February 27, 2006. *See* Copies of all such written discovery attached as Exhibit A to Stefaniak’s June 12, 2006 Motion to Compel. *See* Document 14.
4. Pursuant to Fed.R.Civ.P. 33 and 34, Defendants’ responses were due on April 14, 2006 and March 30, 2006 respectively.
5. On April 13, 2006 Stefaniak granted the Defendants a 30-day extension. *See* Defendants’ confirmation of said extension attached as Exhibit B to Stefaniak’s June 12, 2006 Motion to Compel. *See* Document 14.
6. Defendants failed to respond by the extended deadline.

7. Stefaniak discussed the overdue responses with Defendants on several occasions subsequent to the missed deadline.
8. At the May 24, 2006 scheduling conference before this court, Stefaniak agreed to dismiss two of the four Defendants originally named. In return, Defense counsel agreed to memorialize the arrangement by which such Defendants were released. To date, nothing has been received in this regard.
9. On June 12, 2006, Stefaniak filed a Rue 37(a) Motion to Compel Defendants' overdue responses. *See* Document 14, incorporated herein by reference. The filing of Stefaniak's motion compelled further discussions and, in a letter dated June 22, 2006, Stefaniak again requested compliance and reminded Defendants that, as argued in Stefaniak's motion, all objections had been waived. *See* Plaintiffs' Letter dated June 22, Exhibit 1. Further, Stefaniak memorialized the parties' conversation wherein Stefaniak stated his willingness to withdraw their motion if Defendants served adequate responses "before the court rules on our motion." *See Id.*
10. On Friday June 23, 2006, Defendants served an unsigned draft of their answers to Stefaniak's Interrogatories and promised to deliver the requested documents on Monday June 26, 2006.
11. On June 26, 2006, the day that Defendants' Opposition was due, Stefaniak, without the opportunity to review Defendants' "draft" answers to interrogatories, without receiving *any* of the requested documentation, and in reliance upon Defendants' representations that Stefaniak's requests would be complied with, withdrew their Motion to Compel. Later that day, Defendants served their document production by mail.

12. Upon review of Defendants' responses, Stefaniak found that they were, in fact, inadequate and incomplete. After several conversations Stefaniak was able to convince Defendants to supplement their responses and, on September 14, 2006, supplemental answers to Stefaniak's interrogatories were hand delivered. *See* Defendants' Letter dated September 14, 2006, Exhibit 2. Though Defendants' supplementation was supposed to resolve what has become an extended discovery dispute, it in fact only served to "fan the flames." In their letter, Defendants state that they are "unwilling to supplement [their] answers to Interrogatory Nos. 6(a), 8(h), 9, 12 and 15(b-d)." *See Id.*
13. Unfortunately, subsequent conversations between the parties have been unsuccessful in resolving this matter.
14. To date, the Defendants have failed to properly respond to Stefaniak's discovery requests. *See* Statement of Disputed Requests *supra*.

STATEMENT OF DISPUTED REQUESTS

Pursuant to the "usual rule . . . failing to serve objections to requests for documents within the time period[s] prescribed by Rule[s] 33(b) and] 34(b), Fed.R.Civ.P. operates as a waiver of the objections to production." *See Day v. Boston Edison Co.*, 150 F.R.D. 16, 21 (D.Mass. 1993) *citing to Krewson v. City of Quincy*, 120 F.R.D. 6, 7 (D.Mass. 1988) *see also* Baicker-McKee, *Federal Civil Rules Handbook*, Author's Commentary on Rule 34, 710 (West 2006) ("All grounds for objection must be specifically stated in a timely response or they are waived . . ."). The same applies to Interrogatories. In fact, the 1993 Advisory Committee's Note related to Rule 33(b) states that "Paragraph (4) [was] added to make clear that objection must be specifically justified, and that **unstated or untimely grounds** for objection ordinarily are waived." *See* 7 Moore's, *Committee*

Note of 1993 to Amendment § 33App.05[2], 33App.-13 (3rd ed. 2005) (emphasis added). Therefore, pursuant to the “usual rule” and based upon Defendants’ behavior *supra*, Stefaniak requests that this court strike ALL of Defendants’ objections with regard to each of their responses to Stefaniak’s written discovery requests for both untimeliness and unstated grounds. Stefaniak incorporates this request in each of the “Disputes” set forth *infra*.

Defendants’ disputed responses are discussed *infra* and attached as follows:

DEFENDANTS’ RESPONSES	EXHIBIT
Voyager’s Answers to Stefaniak’s Interrogatories UNDATED AND UNSIGNED; served June 26, 2006	3
WTA’s Answers to Stefaniak’s Interrogatories UNDATED AND UNSIGNED; served June 26, 2006	4
WTA’s SUPPLEMENTAL Answers to Stefaniak’s Interrogatories Dated September 11, 2006	5
WTA’s Responses to Stefaniak’s Request for Production of Documents Dated and served June 26, 2006	6

Since the same Interrogatories were served on both Defendants, answered by the same individual, and since both are represented by the same counsel, the following applies to both:

Interrogatory No. 6

Regarding the operation of the M/V VOYAGER III on the day of the incident please describe the following:

- a. the M/V VOYAGER III’s speed (both the speed over the bottom and the speed through the water) and compass heading and course made good at the time of the incident; and
- b. the settings of the M/V VOYAGER III’s helm controls (e.g. wheel, throttles and gears) at the time of the incident.

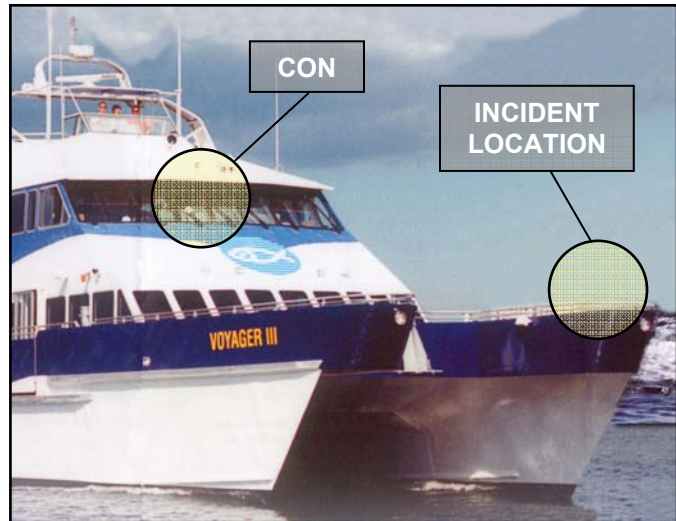
Answer

- a. Captain Dayle Sullivan-Taylor was conning the vessel at the general time of the incident. Because Captain Sullivan-Taylor did not witness the incident and the plaintiff’s deposition has not been obtained, the information sought in subpart (a) cannot be provided at this time. The defendant will supplement this response when and if the exact time of the alleged injury can be established.
- b. Captain Dayle Sullivan-Taylor was conning the vessel at the general time of the incident. Because Captain Sullivan-Taylor did not witness the incident and the plaintiff’s deposition

has not been obtained, the information sought in subsection (b) cannot be provided at this time. The defendant will supplement this response when and if the exact time of the alleged injury can be established.

DISPUTE

Defendant failed to answer this interrogatory. It is not enough to say that the *CAPTAIN* who was “conning the vessel at the general time” and whose view of the incident was unobstructed (*see* image of vessel’s forward half, right) must wait until they have an opportunity to speak with Stefaniak, a *non-seaman*, before they are able to ascertain what their **speed**, **direction** and **helm settings** were at the



The M/B VOYAGER III as seen in Defendants’ Brochure

time of the incident. Assuming, *arguendo*, that the Captain was not watching where the ship was going, the signatory to the answers, William Walker, as the “responding agent . . . must provide the composite knowledge available to the party.” See Fed.R.Civ.P. 33(a) and Baicker-McKee, *Federal Rules Handbook*, *Author’s Commentary on Rule 33*, 693 (West 2006) *citing to* Law v. NCAA, 167 F.R.D. 464, 476 (D.Kan. 1996) (vacated on other grounds). It does not matter “whether or not that officer or agent has personal knowledge of the facts.” See Law, 167 F.R.D. at 476 *citing to* [currently] 7 Moore’s Federal Practice, § 33.102[2] at 33-68.1 (3d ed. 2005) *citing to* General Dynamics Corp. v. Selb Mfg., 481 F.2d 1204, 1210 (8th Cir. 1973) (imposing sanctions when corporation’s secretary failed to answer interrogatory due to “insufficient personal knowledge,” because, as agent of corporation, he was obliged to furnish all information available to corporation). “[T]he duty to provide all information available refers to any information imputed to the

organizational party itself, including information possessed by officers, employees, and former employees of the party, as well as the party's counsel." *See* 7 Moore's, § 33.102[2] at 33-68.1.

The approximate time of the incident is presumably known by the Captain that had to stop the vessel and rush Stefaniak back to shore and is certainly within Defendants' "composite knowledge" where the following documentation, submitted by the defense in response to Stefaniak's document requests, each of which establishes the time frame and/or "exact time" Defendants claim to lack:

- The Coast Guard Report, defense Exhibit A, places the time of the incident at approximately 10:10 a.m. *See* Page 2 of the Coast Guard Report, Exhibit 7.
- Defendants' "Harbor Express Shift Log", defense Exhibit B, though nearly illegible in the form produced (*see* "Dispute" related to Response No. 5, *infra*) appears to state the time and/or time frame of the incident. *See* Harbor Express Shift Log, Exhibit 8.
- Defendants' "Passenger Accident Report", defense Exhibit D, which places the time of the incident at exactly "10 am." *See* Passenger Accident Report, Exhibit 9.

Since Defendant has all of the information necessary to answer the interrogatory, their answer and refusal to supplement epitomizes the "evasive answer" forbidden by the Federal Rules because Defendants' answer has failed to "entail[] a conscientious and good faith effort to comprehend the question and to answer it explicitly." *See* 7 Moore's, § 33.101 at 33-67 *citing to* Herdlein Techs., Inc. v. Century Contractors, Inc., 147 F.R.D. 103, 107 (W.D.N.C. 1993) (interrogatory answer deemed evasive). Defendant failed to supplement this answer in their September 11, 2006 Supplemental Answers and stated their refusal to do so in their September 14 Letter, Exhibit 2.

Interrogatory No. 8(h)

Please describe the following conditions as they were at the time of the incident:

- h. The water conditions both inside and outside of the harbor including water temperature (if known) and height (in feet) of the swells.

Answer

- h. The defendant does not recall the water temperature. This, however, is a matter of public record and equally available to the plaintiff. There was no swell in the inner harbor. The defendant objects to the relevancy of any swell outside the harbor.

DISPUTE

Defendant has waived all objections (*see supra*) and refused to answer a proper interrogatory. Though the 2000 Amendment to Fed.R.Civ.P. 26(b)(1) “narrowed the scope of permissible discovery”; to be **relevant** “the fact must be germane to a claim or defense alleged.” *See In re PE Corp. Securities Litigation*, 221 F.R.D. 20, 24 (D.Conn. 2003) *citing to* 6 Moore’s § 26.41[6][c] (3d ed. 2002). In fact, our First Circuit has held that “discovery should ordinarily be allowed under the concept of relevancy unless it is clear that the information sought can have no possible bearing upon the subject matter of the action.” *See Gagne v. Reddy*, 104 F.R.D. 454, 456 (1st Cir. 1984) *quoting Miller v. Doctor’s Gen. Hosp.*, 76 F.R.D. 136, 138-139 (W.D.Okla. 1977) (“relevancy is broadly construed at the discovery stage of litigation and *a request for discovery should be considered relevant if there is any possibility that the information sought may be relevant to the subject matter of the action.*”) (emphasis added).

Where Stefaniak has consistently maintained that his injuries occurred as a result of Defendants’ excessive speed at the harbor’s breech – where the inner harbor’s calm water transitions into the outer harbor’s more turbulent water and where the Defendants use the speed of their vessel as a selling point in their advertisements, the information sought is relevant to Stefaniak’s claim. *See Brochure at 2, Exhibit 10* (“Enjoy the view as this high-speed catamaran whisks you safely . . .”).

Defendant failed to supplement this answer in their September 11, 2006 Supplemental Answers and stated their refusal to do so in their September 14 Letter, Exhibit 2.

Interrogatory No. 9

Regarding the general pilotage and safe handling of the M/V VOYAGER III please state the maximum speed at which the vessel may be operated inside the harbor as compared to outside the harbor. If the maximum speed is affected by adverse conditions, please describe any such conditions that may have an adverse effect on the ship's speed and state the maximum speed that corresponds to operation in each such condition.

Answer

The defendant submits that the piloting and speed that the vessel is permitted to travel within Boston Harbor is governed in part by regulations equally accessible to the plaintiff. The piloting and speed of the vessel is also affected by the composite of the extent of the weather, the vessel's geographical location, vessel traffic, and other atmospheric conditions. No speed is fixed because these conditions are variable.

DISPUTE

Defendant failed to answer this interrogatory. Stefaniak did not ask what the maximum speed is *governed by* nor did he ask *what "composite" may "affect" such speed*. Stefaniak asked only what *the Defendant knows* regarding the maximum speed at which *its* vessel may be operated inside the harbor vs. outside the harbor and the maximum speed under any "adverse conditions" that may affect such maximum speed(s). Whether such knowledge is based upon internal corporate policies, federal regulations, or advice of the Captain is irrelevant. Therefore, Defendants' answer is "evasive." See Dispute to No. 6, *supra*. In addition, Defendant failed to supplement this answer in their September 11, 2006 Supplemental Answers and stated their refusal to do so in their September 14 Letter, Exhibit 2.

Interrogatory No. 10

Please describe what happened on the date of the incident in full detail and chronological order for the period of time between the passengers boarding the M/V VOYAGER III and the vessel's return to port.

In your answer, kindly include the following:

- a. the name and position of the person who made the decision to set sail;
- b. the medical aid, care and attention given by the defendant;
- c. the medical aid, care and attention given by others ashore;

- d. all regulations and safety precautions that were complied with; and
- e. the name of each person from whom each piece of information given in this answer was drawn specifying who provided what.

Answer

The defendant objects to Interrogatory No. 10 in that it is overly broad and vague, unduly burdensome, and seeks information not likely to lead to the discovery of admissible evidence. Without waiving its objections, the defendant submits the following:

- a. Captain David McDevitt
- b. The plaintiff was made comfortable and attended to while the vessel deviated to a closer port for transfer to an ambulance. He did not receive any “medical care” while onboard the vessel.
- c. The defendant is not aware of the nature, extent, and scope of medical treatment that the plaintiff received ashore.
- d. The defendant objects to subpart (d) in that it fails to identify any regulation and/or precaution and is overly broad, unduly burdensome, and not likely to lead to the discovery of admissible evidence. To the extent that the plaintiff identifies the regulation and/or precaution and limits the scope of subpart (d), the defendant will respond accordingly.
- e. The defendant objects to subpart (e) in that it seeks information obtained in anticipation of litigation and protected by the attorney work-product and attorney-client privileges.

Supplemental Answer

- e. Without waiving its objection, the defendant does not recall each and every crewmember’s involvement with the plaintiff during the time the vessel deviated to a closer port for transfer to an ambulance.

DISPUTE

Defendant has waived all objections (*see supra*) and has failed to answer this interrogatory.

Defendants’ answer is “evasive” (*see* Dispute to No. 6, *supra*) and fails to state the “composite knowledge available to the party.” *See Id.* As stated in the Interrogatory, Stefaniak had simply asked Defendant to “describe” what happened.

Interrogatory No. 12

Please describe all passenger slip and fall accidents of any kind that occurred during any M/V VOYAGER III-related operation during the two years prior to the incident and since the incident regardless of whether the injury gave rise to a lawsuit. Please be sure to include the following in your answer:

- a. the identify of the injured person(s);
- b. the identity of the those witnessing such injuries; and
- c. the identity of the those who have knowledge of such injuries.

Answer

The defendant objects to Interrogatory 12 in that it seeks information not likely to lead to the discovery of admissible evidence. To the extent that the plaintiff limits the scope of Interrogatory No. 12 to incidents that occurred in the same area onboard the vessel, during similar weather conditions, and under similar navigating conditions as alleged in this claim by the plaintiff, the defendant will respond accordingly, otherwise it relies on its objection.

Supplemental Answer

Without waiving its objection, the defendant submits it did not start to operate the vessel until the beginning of the 2003 whale watching season. The defendant is not aware of any personal injuries that occurred on the vessel's forepeak or pulpits from the time it started to operate the vessel until the date of the incident.

DISPUTE

Defendant has waived all objections (*see supra*) and has failed to answer this interrogatory. Defendants' answer is "evasive" (*see* Dispute to No. 6, *supra*) and fails to state the "composite knowledge available to the party." *See Id.* Stefaniak is entitled to the discovery of prior incidents that are *similar* to his accident – i.e. "slip and fall"-type accidents where the injury occurred as a result of the vessel and/or water/weather conditions which worked either independently or together to throw the injured party off their feet. *See* 6 Moore's § 26.41[6][c] at 26-119 *citing to Baine v. General Motors Corp.*, 141 F.R.D. 328, 329-330 (M.D.Ala. 1991) *and Hayden v. Bracy*, 744 F.2d 1338, 1342 (8th Cir. 1984). In addition, any such prior incidents are "relevant" to Stefaniak's claims. *See* "relevance" as argued in Dispute to No. 8, *supra*. Based on the Rules of Civil Procedure as applied by the current law, cited *supra*, the Defendant should not be permitted to narrow the scope of "similar" to the point that it becomes "exact."

According to the U.S. Coast Guard's website, there have been at least two other "reported" incidents in which injuries were sustained aboard the Defendants' vessel. *See* USCG Port State Information Exchange ("PSIX") Report found at <http://cgmix.uscg.mil/PSIX/VesselResults.aspx?VesselID=489830> (accessed November 13, 2006), Exhibit 11. One on October 30, 2001 and another on March 6, 2005 which, upon information and belief, involved a passenger's death in

St. Petersburg, FL. *See Id.* It is important to note that the PSIX report only reflects “reported” incidents. Though Stefaniak has submitted a FOIA request in an effort to obtain the incident reports related to both reported incidents stated *supra*, he maintains his right to discover ALL such similar prior incidents regardless of whether they were reported.

Given the evidence cited to *supra*, Defendant failed to properly answer and/or supplement this answer in their September 11, 2006 Supplemental Answers and stated their refusal to do so in their September 14 Letter, Exhibit 2.

Interrogatory No. 15(d)

Regarding the bow areas of the M/V VOYAGER III please state the following:

- d. a description of the steps taken by the crew of the M/V VOYAGER III to ensure that the M/V VOYAGER III’s passengers would not ride on either bow during rough weather.

Answer

- d. The vessel’s pulpits are closed to passengers during transit. *See, (b) above.* [(b) The vessel’s pulpits are closed to passengers during transit. The Captain will determine whether to open those areas to the passengers upon the observation of whales.]

DISPUTE

Defendant has waived all objections (*see supra*) and has failed to answer this interrogatory. Defendants’ answer is “evasive” (*see* Dispute to No. 6, *supra*) and fails to state the “composite knowledge available to the party.” *See Id.* As stated in the Interrogatory, Stefaniak had simply asked Defendant to “state” the steps taken to ensure that passengers do not ride on either bow during rough weather; i.e. chains, signs, barriers, crew monitoring, announcements, etc.

Defendant failed to supplement this answer in their September 11, 2006 Supplemental Answers and stated their refusal to do so in their September 14 Letter, Exhibit 2.

Interrogatory No. 19

Please describe the steps taken by this defendant and/or the M/V VOYAGER III’s owner, captain, officers and/or shoreside managers, if any, to conduct a Job Hazard Analysis and/or risk assessment for passenger safety during rough weather.

Answer

The defendant objects to the portion of Interrogatory No. 19 seeking information regarding Job Hazard Analysis as it requests information not likely to lead to the discovery of admissible evidence and is protected by the self-critical analysis privilege. The plaintiff was a passenger not an employee at the time of the incident. Additionally, the defendant submits that the Captains that served on board the vessel are U.S. Coast Guard licensed.

Supplemental Answer

During a whale watch excursion, the defendant is continuously assessing any risks to passengers by routinely inspecting the passenger areas and existing circumstances, and; by evaluating the forecasted and actual weather and sea conditions, and responding appropriately under the circumstances. The defendant reserves the right to supplement this response as discovery progresses.

DISPUTE

Notwithstanding Defendants' improper assertion of the "self-critical analysis privilege", which is "a federal *medical* peer review privilege" (*see Moloney v. U.S.*, 204 F.R.D. 16, 18 (D.Mass. 2001) (emphasis added)), Defendant has waived all objections (*see supra*) and has failed to answer this interrogatory. Defendants' answer is "evasive" (*see* Dispute to No. 6, *supra*) and fails to state the "composite knowledge available to the party." *See Id.* Defendant's answer that "the Captains that served on board the vessel are U.S. Coast Guard licensed" is on-point with the answer deemed evasive in *Herdlein Techs., Inc.*, cited *supra*. In *Herdlein Techs., Inc.*, the discovering party requested the identity of all employees "who are registered Professional Engineers or Registered Architects." *See* 147 F.R.D. at 107. The court deemed the responding party's supplemental answer, which stated, "Terry Ray is a professional engineer" to be evasive for its failure to identify Terry Ray's state of registration, his registration number, and for using the article "a" which "[left] open the possibility that other professional engineers work presently for Herdlein or have in the past . . ." *See Id.* In the instant matter, Defendant has provided unsought information in lieu of a "good faith effort to comprehend the question and to answer it explicitly." *See* "evasiveness" argument in Dispute to No. 6, *supra*.

It is *irrelevant* that Stefaniak "was a passenger not an employee." It is *entirely relevant*,

however, whether Defendant “conduct[ed] a Job Hazard Analysis” because ANY safety check performed onboard a vessel may result in safety hazard awareness and respective measures of correction – all of which are discoverable. *See* “relevance” argument in Dispute to No. 8, *supra*.

DISPUTED DOCUMENT REQUESTS

Request No. 3

The nautical chart used at the time of the incident.

Response

To the extent that the defendant still has the chart in its possession, it will be made available to the plaintiff during the vessel’s onboard inspection.

DISPUTE

Though Defendants’ duty to preserve evidence is not at issue here, Defendants’ response that they may no longer have the chart “used at the time of the incident” puts Stefaniak and this court on notice that spoliation may be an issue in the near future.

Pursuant to Fed.R.Civ.P. 34(b), Stefaniak’s Request “specif[ied] a reasonable time, place, and manner of making the inspection and performing the related acts” by stating on page one of his Request that:

The documents requested herein (or true copies of them) are to be produced at the law offices of **THE KAPLAN/BOND GROUP**, 88 Black Falcon Avenue, Suite 301, Boston, Massachusetts 02210 within 30 days from the date of this request.

The defendant may comply with this request by forwarding a copy of the requested documents to plaintiffs’ counsel so long as such delivery is postmarked prior to the date called for in the preceding paragraph. If the documents requested are forwarded to the plaintiffs’ attorney, they should be segregated and identified by the corresponding paragraph number of the request to which they respond. *See* Page 1 of Stefaniak’s Requests, Exhibit 12 (emphasis added).

Defendants waived all objections (*see supra*) and failed to provide a copy. During one of the many conversations’ between counsel referenced to in Facts, *supra*, Stefaniak made it clear that a copy of the chart was required and Stefaniak offered to pay the appropriate copying fee. It is not

uncommon for Captains and/or navigators to make notations on their chart. Stefaniak has a right to see any such notations made during the Defendants' regular course of business and all such markings that were present at the time of the incident.

Request No. 4

The M/V VOYAGER III's logbook for the day of the incident and the month preceding the incident.

AND

Request No. 5

All logs – both personal and official logs – created by the M/V VOYAGER III's operator(s) that mention, record, or otherwise note the time and details of the incident.

Response (same for both)

Please see a copy of the vessel's Deck Log for the date of the incident attached hereto as Exhibit "B."

DISPUTE

Though Defendants produced a "Harbor Express Shift Log" the log produced was for only the day of the incident. Defendant's production is entirely illegible. *See* Exhibit 8. Defendant also failed to produce the requested month's worth of log entries. It is in this regard that Stefaniak has requested, and requests now, legible copies of the "logbook for the day of the incident and the month preceding."

Request No. 6

All M/V VOYAGER III safety policy statements and/or safety credo statements.

Response

The defendant objects to Request No. 6 in that it is overly broad and vague, unduly burdensome, and seeks documents not likely to lead to the discovery of admissible evidence.

DISPUTE

Defendant has waived all objections (*see supra*) and has failed to Respond to this request. Defendants' response is "evasive" (*see* Dispute to No. 6, *supra*) and fails to state the "composite knowledge available to the party." *See Id.*

Rule 34 requires only that "[e]ach item or category in [Stefaniak's request] be described with

‘reasonable particularity.’” See 7 Moore’s at § 34.11[3], 34-29 (3rd ed. 2005) *quoting* Fed.R.Civ.P. 34(b). “Safety policy statements and/or safety credo statements” is very particular and cannot be construed as either “broad” or “vague” where “[t]he test is whether a reasonable person would know what documents or things are called for in the request.” See *Id. citing Bruggeman ex rel. Bruggeman v. Blagojevich*, 219 F.R.D. 430, 436 (N.D.Ill. 2004) *see also* *Crosfield Hastech, Inc. v. Harris Corp.*, 672 F.Supp. 580, 590 (D.NH. 1987) (“request for corporate ‘history’ . . . is too unclear to permit proper response”). Since Stefaniak *named* the requested documents in his request, so too has he satisfied the Federal Rules Decision test that he “provide ‘sufficient information to enable [the party to whom the request is directed] to identify responsive documents.’” See *Bruggeman*, 219 F.R.D. at 436 (emphasis in the original) *quoting* *Parsons v. Jefferson-Pilot Corp.*, 141 F.R.D. 408, 412 (M.D.N.C. 1992).

The requested safety statements are entirely relevant as Stefaniak was in an area, within full view of TWO Captains¹, the crew and several onlookers, that Defendants contend was “closed to passengers during transit.” See WTA’s Answers to Interrogatory Numbers 15b-d, Exhibit 4.

Request No. 16

All logbooks, timesheets and/or overtime records that document the M/V VOYAGER III captain’s work and rest periods for the day of the incident and for the month preceding the incident.

Response

The defendant objects to Request No. 17(sic.) in that it requests information not likely to lead to the discovery of admissible evidence. In his Answers to Interrogatories, the plaintiff does not allege any theory of liability based upon fatigue factors.

DISPUTE

Defendant has waived all objections (*see supra*) and has failed to Respond to this request. Defendant’s response is “evasive” (*see* Dispute to No. 6, *supra*) and fails to state the “composite knowledge available to the party.” See *Id.* Stefaniak’s action is not limited to what he alleges in his

¹ “Captain Dayle Sullivan Taylor, Captain David McDevitt, and Naturalist Jeffrey Dunn were in the vessel’s

Answers to Interrogatories. His claim is limited only to the “‘short and plain statement of [his] claim’ that will give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.” *See Conley v. Gibson*, 355 U.S. 41, 47 (1957) *quoting* Fed.R.Civ.P. 8(a)(2). Stefaniak has a right to employ the “simplified ‘notice pleading’ [that] is made possible by the liberal opportunity for discovery . . . established by the Rules to disclose more precisely the basis of [his] claim and . . . to define more narrowly the disputed facts and issues.” *See Id.* at 47-48. Neither Stefaniak nor this court will ever know whether fatigue was a factor unless Defendants are compelled to produce that which has been properly requested.

Request No. 33

All blueprints, plans, chalks, drawings, diagrams, maps and visual reproductions pertaining to the M/V VOYAGER III.

Response

The defendant objects to Request No. 33 in that it is overly broad and vague, and seeks documents not likely to lead to the discovery of admissible evidence. To the extent the plaintiff limits the scope of Request No. 33 and identifies the specific drawings requested, the defendant will respond accordingly.

DISPUTE

Defendant has waived all objections (*see supra*) and has failed to Respond to this request. Defendant’s response is “evasive” (*see* Dispute to No. 6, *supra*) and fails to state the “composite knowledge available to the party.” *See Id.* Notwithstanding Defendant’s waiver, Stefaniak *cannot* be more specific than naming the specific drawings that Stefaniak seeks. Defendant either has the requested drawings in their possession, custody or control or has easy access to the same. Since Stefaniak’s accident occurred on a specific part of the vessel, Stefaniak is willing to narrow the scope to the forward half of the weatherdeck and forward half of all higher decks.

wheelhouse at the general time of the incident.” *See* WTA’s Answer to Interrogatory Number 7d, Exhibit 4.

Request No. 37

All reports, memoranda, logs, notices, letters, diary entries, notes, journal entries and any other correspondence or document related to injuries occurring aboard the M/V VOYAGER III for a period of five years prior to the date of the incident and up to the present.

Response

The defendant objects to Request No. 37 in that it is overly broad and vague, seeks documents not likely to lead to the discovery of admissible evidence, and documents obtained in anticipation of litigation and protected by the attorney work-product and attorney-client privileges.

DISPUTE

Defendant has waived all objections (*see supra*) and has failed to Respond to this request.

Defendant's response is "evasive" (*see* Dispute to No. 6, *supra*) and fails to state the "composite knowledge available to the party." *See Id.* As with the Dispute related to Interrogatory No. 12 *supra* (incorporated here by reference), Stefaniak is entitled to the discovery of prior incidents that are similar to his accident. *See* Dispute to No. 12, *supra*.

LAW AND ARGUMENT

A corporate party's obligation to designating an officer or agent for purposes of answering interrogatories is not unlike the same obligation that arises under Rule 30(b)(6) to designate a proper representative for purposes of binding the corporation with their sworn testimony. *See* Fed.R.Civ.P. 33 and 30(b)(6) respectively. And, where, under Rule 30(b)(6), "[p]roducing an unprepared witness is tantamount to a failure to appear at a deposition²" so too should the Defendants' unsigned (*ergo* not sworn), incomplete and evasive answers to interrogatories be deemed a failure to answer. *See* Fed.R.Civ.P. 37(a)(3) ("For purposes of this subdivision an evasive or incomplete disclosure, answer, or response is to be treated as a failure to disclose, answer, or respond.") *quoted by*

² *See* CALZATURFICIO S.C.A.R.P.A. s.p.a. v. FABIANO SHOE COMPANY, INC., 201 F.R.D. 33, 39 (1st Cir. 2001) *citing to* Starlight Int'l v. Herlihy, 186 F.R.D. 626, 639 (D. Kan., 1999) (*citing* United States v. Taylor, 166 F.R.D. 356, 363 (M.D.N.C. 1996), *aff'd* 166 F.R.D. 367 (M.D.N.C. 1996)); *see also* Black Horse Lane Assoc., L.P. v. Dow Chemical Corp., 228 F.3d 275, 303 (3 Cir., 2000) ("If the agent [of a corporation] is not knowledgeable about relevant facts, and the principal has failed to designate an available, knowledgeable, and readily identifiable witness, then the appearance is, for all practical purposes, no appearance at all.")

Cunningham v. Hamilton County, Ohio, 527 U.S. 198, 205-206 (1999) *and* Valentin v. Concentrated Chemical Co., 184 F.R.D. 228, 229 (D.PR. 1999) (“[Rule] 37 is a case-management instrument that provides for parties to the motions requesting an order compelling discovery when opposing counsel offers merely evasive or incomplete disclosure.”).

REMEDY

Rule 37(a)(4)(A) provides that “If the motion is granted or if the disclosure or requested discovery was provided after the motion was filed, the court shall, after affording an opportunity to be heard, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in making the motion, including attorney’s fees . . .” *See* Fed.R.Civ.P. 37 (a)(4)(A). The burden is on the Defendants to prove that their “nondisclosure, response, or objection was substantially justified, or that other circumstances make an award of expenses unjust.” *See Id.*

As stated *supra*, Voyager and WTA “failed” (as defined by Rule 37(a)(3)) to respond to Stefaniak’s discovery requests. Also as stated *supra*, Voyager and WTA offered NO “substantial justification” other than their September 14 letter which bluntly stated their “unwillingness” to supplement their responses to Stefaniak’s discovery requests.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has a pending motion for a protective order as provided by Rule 26(c). Neither Voyager nor WTA have filed for a protective order.

REQUEST FOR RELIEF

WHEREFORE, Stefaniak respectfully requests that this honorable court allow his Motion and:

1. Strike all of Defendants' objections; and within ten (10) days:
2. Compel the Defendants to Answer all of the interrogatories propounded by Stefaniak;
3. Compel the Defendants to Produce all the documents requested by Stefaniak;
4. Compel the Defendants to Produce the memorialization of the Agreement by which Stefaniak agreed to dismiss two of the four Defendants; and
5. Compel the Defendants to Reimburse Stefaniak for the fair and reasonable costs of bringing this motion which are as follows:

a. David B. Kaplan, Esq. → \$450.00/hour X 3 hours	\$1,350.00
b. John J. Bromley, J.D. → \$150.00/hour X 9.5 hours	\$1,425.00
<u>TOTAL</u>	<u>\$2,775.00</u>

RULE 37(a)(2)(A) AND LOCAL RULE 37.1 CERTIFICATE OF COMPLIANCE

I, David B. Kaplan, counsel for the Plaintiffs in the above entitled matter, state that counsel have conferred from May 13, 2006 to present with regard to the subject matter of this Motion, in compliance with Fed.R.Civ.P. 37(a)(2)(A) and LR 37.1 in a good faith attempt to resolve or narrow the issues presented herein.

Respectfully submitted,
WILLIAM STEFANIAK and
JANICE STEFANIAK
By their attorney,

/s/ David B. Kaplan
DAVID B. KAPLAN, B.B.O. No. 258540
THE KAPLAN/BOND GROUP
88 Black Falcon Avenue, Suite 301
Boston, MA 02210
(617) 261-0080

I hereby certify that a true copy of the above document was served upon each attorney of record by ECF and that a courtesy copy was served upon the court by first-class mail on November 14, 2006.

/s/ David B. Kaplan

Dated: November 14, 2006

Exhibit 1

THE KAPLAN / BOND GROUP

David B. Kaplan
Thomas M. Bond
Tracey N. Kaplan
Brian Keane

Attorneys at Law and Proctors in Admiralty
88 Black Falcon Avenue, Suite 301
Boston, Massachusetts 02210

(617) 261-0080
Fax (617) 261-1558

June 22, 2006

BY EMAIL AND MAIL

Kenneth Chiarello, Esq.
Clinton & Muzyka P.C.
One Washington Mall
Boston, MA 02108

RE: Stefaniak, et. al. v. Voyager III, LLC, et. al.
USDC for the Eastern District of Massachusetts, Case No. 05-11465

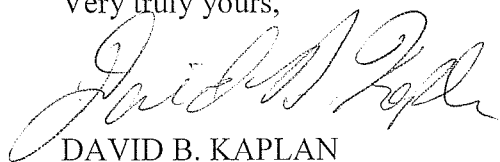
Dear Mr. Chiarello:

We would like to cooperate with your office in every way, shape and manner possible but the law requires a full disclosure to our discovery requests. A disclosure that is now quite overdue.

As you are aware, failing to serve objections to discovery requests within the time period prescribed by the Federal Rules of Civil Procedure operates as a waiver regarding any objections that might otherwise have been raised.

Notwithstanding that you indicate that you are preparing to serve your responses and, assuming that your responses are adequate and served before the court rules on our motion, all of this shall become moot and, pursuant to our earlier conversation, our motion will be withdrawn.

Very truly yours,



DAVID B. KAPLAN

Exhibit 2

CLINTON & MUZYKA, P.C.

ATTORNEYS AT LAW
ONE WASHINGTON MALL, SUITE 1400
BOSTON, MASSACHUSETTS 02108

THOMAS E. CLINTON
THOMAS J. MUZYKA
ROBERT E. COLLINS*
KENNETH M. CHIARELLO
TERENCE G. KENNEALLY
ARTHUR P. SKARMEAS**
Of Counsel

September 14, 2006

BY-HAND DELIVERY

TELEPHONE
(617) 723-9165
FACSIMILE
(617) 720-3489

E-MAIL:
c&m@clinmuzyka.com

*Also admitted in RI
**Also admitted in NH

The Kaplan/Bond Group
88 Black Falcon Avenue
Suite 301
Boston, MA 02210

Attention: John Bromley, Esquire

RE: William Stefaniak, et al vs.
VOYAGER III, LLC, et al
Civil Action No. 05-11465-MLW

Dear Mr. Bromley:

In reference to the above-matter, please find enclosed herewith Water Transportation Alternatives, Inc.'s Supplemental Answers to William Stefaniak's Interrogatories. The defendant is unwilling to supplement its answers to Interrogatory Nos. 6(a), 8(h), 9, 12, and 15(b-d). We believe that our answers appropriately respond to the information sought therein.

We are also enclosing copies of the documents received in response to the subpoenas served upon Wilson Bus Lines, Inc. and Lund Precision Products, Inc., the primary and excess insurance policies for the M/V VOYAGER III, and several HIPPA Authorizations¹ to be executed by the

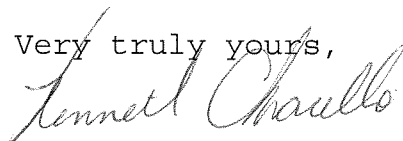
¹ Leominster Medical Associates, Brigham & Women's Hospital (2), South Shore Hospital, Whittier Rehabilitation Hospital (2), Whidden Memorial Hospital, Health Alliance Hospital (2), Diversified Visiting Nurse Associates (2), Sterling Medical Associates, BWH Phy. Org. Department of Surgery, Frederick Makrauer, M.D., Newton-Wellesley Hospital, Massachusetts General Hospital Orthopedic Associates, Org. Department of Orthopedic Surgery, Graeme Steele, M.D., Sigal Yawetz, M.D., AMR Ambulance, and Highlands-Skilled Nursing Facility.

plaintiff and returned our office. Based upon the fact that the M/V VOYAGER III was chartered (bareboat), managed, and operated by Water Transportation Alternatives, Inc. at the time of the incident and that there is sufficient coverage for the alleged loss, we would appreciate Voyager III, LLC being dismissed from the action and that its 30(b)(6) deposition be cancelled.

As for the 30(b)(6) deposition of Water Transportation Alternatives, Inc., which has been rescheduled for September 27, 2006 at 10:00 a.m., the defendant objects to the first issue listed on "Schedule A" as it is extremely vague and broad. Please further define "all matters identified in plaintiff's Complaint."

Please contact the undersigned to further discuss the dismissal of Voyager III, LLC upon receipt. Thank you for your cooperation.

Very truly yours,



Kenneth M. Chiarello

Enclosures.

Exhibit 3

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

WILLIAM STEFANIAK &
JANICE STEFANIAK,
Plaintiffs,

CIVIL ACTION
NO: 05-11465-MLW

vs.

VOYAGER III, LLC., WATER
TRANSPORTATION ALTERNATIVES, INC.,
NEW ENGLAND AQUARIUM CORPORATION, and
NEW ENGLAND AQUARIUM MARINE LIFE
CENTER, INC.,
Defendants.

DEFENDANT, VOYAGER III, LLC'S, ANSWERS TO WILLIAM
STEFANIAK'S INTERROGATORIES

Now come the defendant, Voyager III, LLC, in the
above-entitled action, by and through its undersigned
attorneys, Clinton & Muzyka, P.C., and submits herewith
its answers to William Stefaniak's Interrogatories as
follows:

GENERAL OBJECTION

The defendant objects to all of the plaintiff's
Interrogatories insofar as they seek discovery of matters
which constitute privileged communications or materials
prepared in the anticipation of litigation or trial. By
furnishing an answer to any Interrogatory, the defendant
does not waive any of its general or specific objections
to that or any other Interrogatory. The defendant further

objects because the plaintiff's Interrogatories, including their subparts, exceed the amount allowed under the Local Rules for the U.S. District Court for the District of Massachusetts and the Federal Rules of Civil Procedure.

INTERROGATORIES

- Q.1. Please identify yourself fully, stating your name, residence, business address and relationship to the above-named defendant including your job title and number of years employed by them.
- A.1. William L. Walker, 703 Washington Street, Quincy, Massachusetts. The undersigned has been employed as the Manager for Voyager III, LLC for approximately three (3) years. The defendant objects to the remaining information sought in Interrogatory No. 1 because it is not likely to lead to the discovery of admissible evidence.
- Q.2. Please state whether, at the time of the incident, the defendant owned, operated, controlled and/or chartered the M/V VOYAGER III.
- A.2. Voyager III, LLC owned the vessel and Water Transportation Alternatives, Inc. chartered, operated, and controlled the vessel at the time of the incident.
- Q.3. Please identify all "documents" referring to, describing, evidencing, or constituting provisions of any and all contracts, leases and charter agreements by and between this defendant and either WATER TRANSPORTATION ALTERNATIVES, INC. or NEW ENGLAND AQUARIUM CORPORATION or NEW ENGLAND AQUARIUM MARINE LIFE CENTER, INC. or any persons or entities that were contractually involved with the M/V VOYAGER III at the time of the incident by setting forth:
- (a) The type of document;
 - (b) The general subject matter of the document;

- (c) The date of the document;
- (d) The author of the document, and his relationship to this defendant; and
- (e) The name, address, and relationship to this defendant of the person who presently has custody of the document.

A.3(a-e) Please see the Operating Agreement attached hereto as Exhibits "A."

Q.4. Please identify each expert whom you anticipate calling as a witness at the trial of this action by setting forth:

- (a) His or her name, address, qualifications and area of expertise;
- (b) The subject matter on which he or she is expected to testify;
- (c) The substance of each and every opinion to which he or she is expected to testify and the facts upon which each is based;
- (d) The identity of each document, treatise, report, study and article consulted and/or reviewed by him or her in forming each opinion.

A.4. The defendant objects to Request No. 4 in that it seeks the disclosure of information that is not required to be disclosed pursuant to Rule 26 of the Federal Rules of Civil Procedure. Without waiving its objection, the defendant has not made a determination concerning the experts it intends to call at trial. Once a determination is made, the defendant will supplement this response and disclose the required information in accordance with the Federal Rules of Civil Procedure and Local Rules.

Q.5. Does the defendant allege that any other person (including the plaintiff, William Stefaniak),

firm or entity caused or contributed to the cause of the incident?

If the answer to this interrogatory is anything other than "no", please identify, pursuant to the definition above, each such person, firm or entity that you feel contributed in any way to the happening of the incident and state all facts upon which any such contention is based, together with when, where and how the defendant became aware of each such allegation.

A.5. Other than the plaintiff, the defendant at the present time does not have any information that any other entity caused or contributed to the incident. The defendant reserves the right and will supplement this response as the plaintiff's theories of liability are further disclosed and the circumstances of the incident are discovered through discovery.

Q.6. Regarding the operation of the M/V VOYAGER III on the day of the incident please describe the following:

- (a) The M/V VOYAGER III's speed (both the speed over the bottom and the speed through the water) and compass heading and course made good at the time of the incident; and
- (b) The settings of the M/V VOYAGER III's helm control (e.g. wheel, throttles and gears) at the time of the incident.

A.6(a&b) The defendant submits that Water Transportation Alternatives, Inc. was responsible for the operation and management of its vessel at the time of the incident.

Q.7. Please identify and, in addition to the definition above, including the relationship to this defendant of each of the following as they were on the date of the incident:

- (a) The person(s) and/or entity(ies) responsible for the ownership, operation, maintenance, control and charter of the M/V VOYAGER III;

- (b) The captain of the M/V VOYAGER III and his or her precise location at the time of the incident and whether he or she could see the port side bow at the time of the incident;
- (c) The safety director and/or the person in charge of safety aboard the M/V VOYAGER III at the time of the incident;
- (d) The crew of the M/V VOYAGER III including each crewmember's job title and/or position and the precise location of each at the time of the incident specifying those present in the wheelhouse at the time of the incident;
- (e) The person(s) and/or entity(ies) responsible for maintenance and safety aboard the M/V VOYAGER III;
- (f) The M/V VOYAGER III's shoreside employees who were responsible for safety management and supervision of the M/V VOYAGER III at the time of the incident.

A.7

- (a) Voyager III, LLC owned the vessel and Water Transportation Alternatives, Inc. chartered, operated, maintained, and controlled the vessel at the time of the incident;
- (b) The defendant submits that Water Transportation Alternatives, Inc. was responsible for the operation and management of its vessel at the time of the incident;
- (c) The defendant submits that Water Transportation Alternatives, Inc. was responsible for the operation and management of its vessel at the time of the incident;
- (d) The defendant submits that Water Transportation Alternatives, Inc. was responsible for the operation and

6

management of its vessel at the time of the incident;

(e) Water Transportation Alternatives, Inc.,
and;

(f) None.

Q.8. Please describe the following conditions as they were at the time of the incident:

(a) The wind speed and direction;

(b) The velocity and direction of the current at the time of the incident;

(c) The Beaufort Sea State;

(d) The precise location in either latitude and longitude or Loran;

(e) The temperature;

(f) The amount of precipitation;

(g) The visibility; and

(h) The water conditions both inside and outside of the harbor including water temperature (if known) and height (in feet) of the swells.

A.8(a-h) The defendant submits that Water Transportation Alternatives, Inc. was responsible for the operation and management of its vessel at the time of the incident.

Q.9. Regarding the general pilotage and safe handling of the M/V VOYAGER III please state the maximum speed at which the vessel may be operated inside the harbor as compared to outside the harbor. ~~If the maximum speed is affected by adverse conditions, please describe any such conditions that may have an adverse effect on the ship's speed and state the maximum speed that corresponds to operation in each such condition.~~

A.9. The defendant submits that the piloting and speed that the vessel is permitted to travel within Boston Harbor is governed in part by regulations equally accessible to the plaintiff. The piloting and speed of the vessel is also affected by the composite of the extent of the weather, the vessel's geographical location, vessel traffic, and other atmospheric conditions. No speed is fixed because these conditions are variable.

Q.10. Please describe what happened on the date of the incident in full detail and chronological order for the period of time between the passengers boarding the M/V VOYAGER III and the vessel's return to port. In your answer, kindly including the following:

- (a) The name and position of the person who made the decision to set sail;
- (b) The medical aid, care and attention given by the defendant;
- (c) The medical aid, care and attention given by others ashore;
- (d) All regulations and safety precautions that were complied with; and
- (e) The name of each person from whom each piece of information given in this answer was drawn specifying who provided what.

A.10. The defendant objects to Interrogatory No. 10 in that it is overly broad and vague, unduly burdensome, and seeks information not likely to lead to the discovery of admissible evidence. Without waiving its objections, the defendant submits the following:

- (a) The defendant submits that Water Transportation Alternatives, Inc. was responsible for the operation and management of its vessel at the time of the incident.

- (b) The defendant submits that Water Transportation Alternatives, Inc. is responsible for the operation and management of its vessel.
- (c) The defendant is not aware of the nature, extent, and scope of medical treatment that the plaintiff received ashore.
- (d) The defendant objects to subpart (d) in that it fails to identify any regulation and/or precaution and is overly broad, unduly burdensome, and not likely to lead to the discovery of admissible evidence. To the extent that the plaintiff identifies the regulation and/or precaution and limits the scope of subpart (d), the defendant will respond accordingly.
- (e) The defendant objects to subpart (e) in that it seeks information obtained in anticipation of litigation and protected by the attorney work-product and attorney-client privileges.

- Q.11. Please identify all documents or oral communications which you have withheld on the grounds of work product, privilege or for other reasons, including the destruction of such documents, by setting forth, in addition to the definition above, the following:
- (a) The author's relationship to this defendant;
 - (b) The name, address and relationship to this defendant of all persons who presently have custody of the documents; and
 - (c) All facts and law upon which you are basing your assertion of work product or privilege.
- A.11. (a) The defendant has transcribed statements from Jeffrey Dunn, Dayle Sullivan-Taylor, David McDevit and Jason Kelly, which were obtained by Brian Morrissey of Marine

Safety Consultants, Inc. Marine Safety Consultants, Inc. was engaged in anticipation of litigation to investigate the circumstances surrounding the incident. The defendant also has within its possession handwritten statements from Dayle Sullivan-Taylor and Jeffrey Dunn.

- (b) Defense counsel and Marine Safety Consultants, Inc. have copies of the foregoing statements. The defendant also has copies of the handwritten statements. The defendant reserves the right to supplement this response.
- (c) The foregoing statements were obtained and prepared in anticipation of litigation and are protected by the attorney work-product and attorney-client privileges.

Q.12. Please describe all passenger slip and fall accidents of any kind that occurred during any M/V VOYAGER III operation during the two years prior to the incident and since the incident regardless of whether the injury gave rise to a lawsuit. Please be sure to include the following in your answer:

- (a) The identity of the injured person(s);
- (b) The identity of those witnessing such injuries, and;
- (c) The identity of those who have knowledge of such injuries.

A.12(a-c) The defendant objects to Interrogatory No. 12 in that it seeks information not likely to lead to the discovery of admissible evidence. To the extent that the plaintiff limits the scope of Interrogatory No. 12 to incidents that occurred in the same area onboard the vessel during similar weather conditions and under similar navigating conditions, as alleged in this claim by the plaintiff, the defendant will respond accordingly otherwise it relies on its objection.

Q.13. For a period of five years prior to the date of the incident, please identify each of the defendants' employees who were in charge of organizing, planning or supervising safety aboard the M/V VOYAGER III by setting forth, in addition to the definition above, the following:

- (a) A full and complete description of each identified person's duties; and
- (b) The period for which each was employed.

A.13(a&b) The defendant objects to Interrogatory No. 13 in that it is overly broad and vague, unduly burdensome, and seeks information not likely to lead to the discovery of admissible evidence. Without waiving its objection, the defendant submits that Water Transportation Alternatives, Inc. was responsible for the operation and management of its vessel at the time of the incident.

Q.14. Regarding all communications made to passengers aboard the M/V VOYAGER III on the date of the incident, please state the following:

- (a) A description of the public address system on board the M/V VOYAGER III at the time of the incident;
- (b) A detailed description of the pre-departure safety orientation given to passengers at the start of every tour;
- (c) Whether during the safety orientation passengers are told not to carry cameras or other objects in their hands when they walk in the forward deck areas; and
- (d) a detailed description of safety warnings or instructions of any kind given to the passengers by the captain or crew on the day of the incident regarding the possible effects on the vessel of the acceleration from harbor speed to cruising speed.

- A.14.
- (a) The vessel is equipped with a public announcement system, which is located in the wheelhouse, and is capable of addressing all spaces on the vessel.
 - (b) The defendant submits that Water Transportation Alternatives, Inc. was responsible for the operation and management of its vessel at the time of the incident.
 - (c) The defendant submits that Water Transportation Alternatives, Inc. was responsible for the operation and management of its vessel at the time of the incident.
 - (d) The defendant submits that Water Transportation Alternatives, Inc. was responsible for the operation and management of its vessel at the time of the incident.

Q.15. Regarding the bow areas of the M/V VOYAGER III please state the following:

- (a) The composition of the deck in the area where the incident occurred including in your answer whether the deck was painted with paint and/or non-skid and the most recent date prior to the incident when the deck had last been painted and/or had non-skid applied;
- (b) The point during a cruise, if ever, that the bow areas are made off-limits to passengers due to rough weather and the identity of the person who makes that decision;
- (c) The M/V VOYAGER III's policy regarding when, and under what wind and sea conditions the bow area should be made off limits; and
- (d) A description of the steps taken by the crew of the M/V VOYAGER III to ensure that

the M/V VOYAGER III's passengers would not ride on either bow during rough weather.

- A.15.
- (a) The fore deck in the area of the incident is constructed of aluminum and is coated with non-skid material, which is applied annually or as necessary;
 - (b) The defendant submits that Water Transportation Alternatives, Inc. is responsible for the operation and management of its vessel at the time of the incident.
 - (c) The defendant submits that Water Transportation Alternatives, Inc. is responsible for the operation and management of its vessel at the time of the incident.
 - (d) The defendant submits that Water Transportation Alternatives, Inc. is responsible for the operation and management of its vessel at the time of the incident.
- Q.16. Regarding organizations, professional societies, passenger vessel association and safety groups that the M/V VOYAGER III or those that own and operate her might have been a member of on or before the date of the incident:
- (a) List all such organizations of which the M/V VOYAGER III and/or those that own and operate her were a member;
 - (b) State whether the M/V VOYAGER III and/or those that own and operate her were a member of the Passenger Vessel Association (PVA);
 - (c) State whether the M/V VOYAGER III's shoreside employees and/or vessel operators and crewmembers have, in any form, participated in the U.S. Coast Guard's *Prevention Through People* program.

- A.16. (a) Passenger Vessel Association;
- (b) Yes, and;
- (c) No.

Q.17. Please state whether the defendants' agents, servants, or employees investigated the incident and/or inspected the area where the incident occurred. In your answer, kindly including the following:

- (a) The identity of the person(s) who performed any such investigation;
- (b) The identity of the person(s) who performed any such inspection;
- (c) A detailed description of each such investigation and inspection including the results of each; and
- (d) The identity of any written records of all such investigations and inspections.
- A.17. (a) Thomas J. Muzyka and Kenneth M. Chiarello, Clinton and Muzyka, P.C., One Washington Mall, Boston, MA 02108 and Brian Morrissey, Marine Safety Consultants, Inc., 26 Water Street, Fairhaven, Massachusetts;
- (b) Brian Morrissey, Marine Safety Consultants, Inc., 26 Water Street, Fairhaven, Massachusetts;
- (c) The defendant objects to subpart (c) in that it seeks information protected by the attorney work-product and attorney-client privileges, and information obtained in anticipation of litigation.
- (d) The defendant objects to subpart (d) in that it seeks information protected by the attorney work-product and attorney-client privileges, and information obtained in anticipation of litigation.

- Q.18. Please state whether the M/V VOYAGER III was experiencing any steering gear or engine problems on the day of the incident.
- A.18. The defendant submits that Water Transportation Alternatives, Inc. was responsible for the operation and management of its vessel at the time of the incident.
- Q.19. Please describe the steps taken by the M/V VOYAGER III's owner, captain, officers and/or shoreside managers, if any, to conduct a Job Hazard Analysis and/or risk assessment for passenger safety during rough weather.
- A.19. The defendant objects to the portion of Interrogatory No. 19 seeking information regarding Job Hazard Analysis as it requests information not likely to lead to the discovery of admissible evidence and is protected by the self-critical analysis privilege. The plaintiff was a passenger not an employee at the time of the incident. In respect to the remaining information sought therein, the defendant submits that Water Transportation Alternatives, Inc. was responsible for the operation and management of its vessel at the time of the incident.
- Q.20. Please describe the training and/or instruction, if any, received by the M/V VOYAGER III's captain, officers and/or crewmembers regarding passenger safety including but not limited to during rough weather.
- A.20. The defendant objects to Interrogatory No. 20 in that it is overly broad and vague. Without waiving its objection, the defendant states that Water Transportation Alternatives, Inc. was responsible for the operation and management of its vessel at the time of the incident.
- Q.21. Please describe any post-accident policy changes or alterations made to operation and safety policies aboard the M/V VOYAGER III after the incident regardless of whether such changes were a result of the incident.

A.21. There were no changes to policy.

Q.22. Regarding statements made by witnesses and/or persons having knowledge of the facts and/or circumstances concerning the incident, please identify the following:

- (a) All statements or memoranda of statements that were made by the plaintiffs concerning the incident;
- (b) All statements or memoranda of statements that were made by persons who witnessed the incident; and
- (c) All statements or memoranda of statements that were made by persons having knowledge of the facts and/or circumstances concerning the incident.

A.22. (a) None;

(b) Jeffrey Dunn;

(c) Captain David McDevitt, Captain Dayle Sullivan-Taylor, and Jason Kelly.

Q.23. If you claim to be a charitable organization, describe the manner in which any activity carried on by the M/V VOYAGER III, in its whale watching capacity, directly accomplished the charitable purposes of this defendant corporation.

A.23. Not applicable.

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SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS
____ DAY OF JUNE, 2006.

VOYAGER III, LLC

By: _____ William L. Walker
Its: Principal

OBJECTIONS BY:

Thomas J. Muzyka
BBO NO. 365540
Kenneth M. Chiarello
BBO NO. 639274
CLINTON & MUZYKA, P.C
One Washington Mall
Suite 1400
Boston, MA 02108
(617) 723-9165

Exhibit 4

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

WILLIAM STEFANIAK &
JANICE STEFANIAK,
Plaintiffs,

CIVIL ACTION
NO: 05-11465-MLW

vs.

VOYAGER III, LLC., WATER
TRANSPORTATION ALTERNATIVES, INC.,
NEW ENGLAND AQUARIUM CORPORATION, and
NEW ENGLAND AQUARIUM MARINE LIFE
CENTER, INC.,
Defendants.

DEFENDANT, WATER TRANSPORTATION ALTERNATIVES, INC.'S,
ANWERS TO WILLIAM STEFANIAK'S INTERROGATORIES

Now come the defendant, Water Transportation Alternatives, Inc., in the above-entitled action, by and through its undersigned attorneys, Clinton & Muzyka, P.C., and submits herewith its answers to William Stefaniak's Interrogatories as follows:

GENERAL OBJECTION

The defendant objects to all of the plaintiff's Interrogatories insofar as they seek discovery of matters which constitute privileged communications or materials prepared in the anticipation of litigation or trial. By furnishing an answer to any Interrogatory, the defendant does not waive any of its general or specific objections to that or any other Interrogatory. The defendant further

objects because the plaintiff's Interrogatories, including their subparts, exceed the amount allowed under the Local Rules for the U.S. District Court for the District of Massachusetts and the Federal Rules of Civil Procedure.

INTERROGATORIES

- Q.1. Please identify yourself fully, stating your name, residence, business address and relationship to the above-named defendant including your job title and number of years employed by them.
- A.1. William L. Walker, 703 Washington Street, Quincy, Massachusetts. The undersigned has been the President for Water Transportation Alternatives, Inc. for approximately three (3) years. The defendant objects to the remaining information sought in Interrogatory No. 1 because it is not likely to lead to the discovery of admissible evidence.
- Q.2. Please state whether, at the time of the incident, the defendant owned, operated, controlled and/or chartered the M/V VOYAGER III.
- A.2. Voyager III, LLC owned the vessel and Water Transportation Alternatives, Inc. chartered, operated, and controlled the vessel at the time of the incident.
- Q.3. Please identify all "documents" referring to, describing, evidencing, or constituting provisions of any and all contracts, leases and charter agreements by and between this defendant and either WATER TRANSPORTATION ALTERNATIVES, INC. or NEW ENGLAND AQUARIUM CORPORATION or NEW ENGLAND AQUARIUM MARINE LIFE CENTER, INC. or any persons or entities that were contractually involved with the M/V VOYAGER III at the time of the incident by setting forth:
- (a) The type of document;

- (b) The general subject matter of the document;
- (c) The date of the document;
- (d) The author of the document, and his relationship to this defendant; and
- (e) The name, address, and relationship to this defendant of the person who presently has custody of the document.

A.3(a-e) Please see the Operating Agreement attached hereto as Exhibit "A."

Q.4. Please identify each expert whom you anticipate calling as a witness at the trial of this action by setting forth:

- (a) His or her name, address, qualifications and area of expertise;
- (b) The subject matter on which he or she is expected to testify;
- (c) The substance of each and every opinion to which he or she is expected to testify and the facts upon which each is based;
- (d) The identity of each document, treatise, report, study and article consulted and/or reviewed by him or her in forming each opinion.

A.4. The defendant objects to Request No. 4 in that it seeks the disclosure of information that is not required to be disclosed pursuant to Rule 26 of the Federal Rules of Civil Procedure. Without waiving its objection, the defendant has not made a determination concerning the experts it intends to call at trial. Once a determination is made, the defendant will supplement this response and disclose the required information in accordance with the Federal Rules of Civil Procedure and Local Rules.

Q.5. Does the defendant allege that any other person (including the plaintiff, William Stefaniak),

firm or entity caused or contributed to the cause of the incident?

If the answer to this interrogatory is anything other than "no", please identify, pursuant to the definition above, each such person, firm or entity that you feel contributed in any way to the happening of the incident and state all facts upon which any such contention is based, together with when, where and how the defendant became aware of each such allegation.

A.5. Other than the plaintiff, the defendant at the present time does not have any information that any other entity caused or contributed to the incident. The defendant reserves the right and will supplement this response as the plaintiff's theories of liability are further disclosed and the circumstances of the incident are discovered through discovery.

Q.6. Regarding the operation of the M/V VOYAGER III on the day of the incident please describe the following:

- (a) The M/V VOYAGER III's speed (both the speed over the bottom and the speed through the water) and compass heading and course made good at the time of the incident; and
- (b) The settings of the M/V VOYAGER III's helm control (e.g. wheel, throttles and gears) at the time of the incident.

A.6. (a) Captain Dayle Sullivan-Taylor was conning the vessel at the general time of the incident. Because Captain Sullivan-Taylor did not witness the incident and the plaintiff's deposition has not been obtained, the information sought in subpart (a) cannot be provided at this time. The defendant will supplement this response when and if the exact time of the alleged injury can be established.

(b) Captain Dayle Sullivan-Taylor was conning the vessel at the general time of the

incident. Because Captain Sullivan-Taylor did not witness the incident and the plaintiff's deposition has not been obtained, the information sought in subsection (b) cannot be provided at this time. The defendant will supplement this response when and if the exact time of the alleged injury can be established.

- Q.7. Please identify and, in addition to the definition above, including the relationship to this defendant of each of the following as they were on the date of the incident:
- (a) The person(s) and/or entity(ies) responsible for the ownership, operation, maintenance, control and charter of the M/V VOYAGER III;
 - (b) The captain of the M/V VOYAGER III and his or her precise location at the time of the incident and whether he or she could see the port side bow at the time of the incident;
 - (c) The safety director and/or the person in charge of safety aboard the M/V VOYAGER II at the time of the incident;
 - (d) The crew of the M/V VOYAGER III including each crewmember's job title and/or position and the precise location of each at the time of the incident specifying those present in the wheelhouse at the time of the incident;
 - (e) The person(s) and/or entity(ies) responsible for maintenance and safety aboard the M/V VOYAGER III;
 - (f) The M/V VOYAGER III's shoreside employees who were responsible for safety management and supervision of the M/V VOYAGER III at the time of the incident.
- A.7 (a) Voyager III, LLC owned the vessel and Water Transportation Alternatives, Inc.

chartered, operated, maintained, and controlled the vessel at that time;

- (b) Captain Dayle Sullivan-Taylor was conning the vessel from its wheelhouse at the general time of the incident. Captain Sullivan-Taylor could observe the port pulpit while conning the vessel;
- (c) Captain David McDevitt was responsible for safety onboard the vessel at the time of the incident;
- (d) Captain Dayle Sullivan Taylor, Captain David McDevitt, and Naturalist Jeffrey Dunn were in the vessel's wheelhouse at the general time of the incident. Crewmember Jason Kelly was in the vicinity of the vessel's food & beverage counter. The location of the remaining crewmembers, to wit, Melissa Rocha, Nancy Nickerson, and Russell Drysdale at the general time of the incident has not been determined. The defendant will supplement this response as discovery progresses;
- (e) Captain David McDevitt was responsible for safety onboard the vessel at the time of the incident, and;
- (f) William L. Walker and Michael McGurl.

Q.8. Please describe the following conditions as they were at the time of the incident:

- (a) The wind speed and direction;
- (b) The velocity and direction of the current at the time of the incident;
- (c) The Beaufort Sea State;
- (d) The precise location in either latitude and longitude or Loran;
- (e) The temperature;

- (f) The amount of precipitation;
- (g) The visibility; and
- (h) The water conditions both inside and outside of the harbor including water temperature (if known) and height (in feet) of the swells.

A.8. Captain Dayle Sullivan-Taylor was conning the vessel at the general time of the incident. Because Captain Sullivan-Taylor did not witness the incident and the plaintiff's deposition has not been obtained, the information sought in Interrogatory No. 8 including its subparts cannot be provided with specificity at this time. Nevertheless, the defendant provides the following information for the general time of the incident.

- (a) Fifteen (15) to twenty (20) knot northeasterly winds.
- (b) The defendant does not recall the velocity and direction of the current, but states that it is a matter of public record equally available to the plaintiff;
- (c) Beaufort Scale 2;
- (d) Slightly seaward of Buoy No. 3;
- (e) Approximately 60 degrees Fahrenheit;
- (f) It was raining, the amount was not recorded;
- (g) One (1) mile of visibility, and;
- (h) The defendant does not recall the water temperature. This, however, is a matter of public record and equally available to the plaintiff. There was no swell in the inner harbor. The defendant objects to the relevancy of any swell outside the harbor.

Q.9. Regarding the general pilotage and safe handling of the M/V VOYAGER III please state the maximum speed at which the vessel may be operated inside the harbor as compared to outside the harbor. If the maximum speed is affected by adverse conditions, please describe any such conditions that may have an adverse effect on the ship's speed and state the maximum speed that corresponds to operation in each such condition.

A.9. The defendant submits that the piloting and the speed that the vessel is permitted to travel within Boston Harbor is governed in part by regulations equally accessible to the plaintiff. The piloting and speed of the vessel is also affected by the composite of the extent of the weather, the vessel's geographic location, vessel traffic, and other atmospheric conditions. No speed is fixed because these conditions are variable.

Q.10. Please describe what happened on the date of the incident in full detail and chronological order for the period of time between the passengers boarding the M/V VOYAGER III and the vessel's return to port. In your answer, kindly including the following:

- (a) The name and position of the person who made the decision to set sail;
- (b) The medical aid, care and attention given by the defendant;
- (c) The medical aid, care and attention given by others ashore;
- (d) All regulations and safety precautions that were complied with; and
- (e) The name of each person from whom each piece of information given in this answer was drawn specifying who provided what.

A.10. The defendant objects to Interrogatory No. 10 in that it is overly broad and vague, unduly burdensome, and seeks information not likely to

lead to the discovery of admissible evidence. Without waiving its objections, the defendant submits the following:

- (a) Captain David McDevitt:
- (b) The plaintiff was made comfortable and attended to while the vessel deviated to a closer port for transfer to an ambulance. He did not receive any "medical care" while onboard the vessel.
- (c) The defendant is not aware of the nature, extent, and scope of medical treatment that the plaintiff received ashore.
- (d) The defendant objects to subpart (d) in that it fails to identify any regulation and/or precaution and is overly broad, unduly burdensome, and not likely to lead to the discovery of admissible evidence. To the extent that the plaintiff identifies the regulation and/or precaution and limits the scope of subpart (d), the defendant will respond accordingly.
- (e) The defendant objects to subpart (e) in that it seeks information obtained in anticipation of litigation and protected by the attorney work-product and attorney-client privileges.

Q.11. Please identify all documents or oral communications which you have withheld on the grounds of work product, privilege or for other reasons, including the destruction of such documents, by setting forth, in addition to the definition above, the following:

- (a) The author's relationship to this defendant;
- (b) The name, address and relationship to this defendant of all persons who presently have custody of the documents; and

- (c) All facts and law upon which you are basing your assertion of work product or privilege.

- A.11.
- (a) The defendant has transcribed statements from Jeffrey Dunn, Dayle Sullivan-Taylor, David McDevitt and Jason Kelly, which were obtained by Brian Morrissey of Marine Safety Consultants, Inc. Marine Safety Consultants, Inc. was engaged in anticipation of litigation to investigate the circumstances surrounding the incident. The defendant also has within its possession handwritten statements from Dayle Sullivan-Taylor and Jeffrey Dunn.
 - (b) Defense counsel and Marine Safety Consultants, Inc. have copies of the foregoing statements. The defendant also has copies of the handwritten statements. The defendant reserves the right to supplement this response.
 - (c) The foregoing statements were obtained and prepared in anticipation of litigation and are protected by the attorney work-product and attorney-client privileges.

Q.12. Please describe all passenger slip and fall accidents of any kind that occurred during any M/V VOYAGER III operation during the two years prior to the incident and since the incident regardless of whether the injury gave rise to a lawsuit. Please be sure to include the following in your answer:

- (a) The identity of the injured person(s);
- (b) The identity of those witnessing such injuries, and;
- (c) The identity of those who have knowledge of such injuries.

A.12(a-c) The defendant objects to Interrogatory No. 12 in that it seeks information not likely to lead to the discovery of admissible evidence. To the

extent that the plaintiff limits the scope of Interrogatory No. 12 to incidents that occurred in the same area onboard the vessel, during similar weather conditions, and under similar navigating conditions as alleged in this claim by the plaintiff, the defendant will respond accordingly, otherwise it relies on its objection.

Q.13. For a period of five years prior to the date of the incident, please identify each of the defendants' employees who were in charge of organizing, planning or supervising safety aboard the M/V VOYAGER III by setting forth, in addition to the definition above, the following:

- (a) A full and complete description of each identified person's duties; and
- (b) The period for which each was employed.

A.13(a&b) The defendant objects to Interrogatory No. 13 in that it is overly broad and vague, unduly burdensome, and seeks information not likely to lead to the discovery of admissible evidence. Without waiving its objection, the defendant submits that all of the Captains that have served onboard the vessel were responsible for safety. The defendant further submits that William Walker and Michael McGurl were responsible for overseeing the safe operation and management of the vessel at the time of the incident.

Q.14. Regarding all communications made to passengers aboard the M/V VOYAGER III on the date of the incident, please state the following:

- (a) A description of the public address system on board the M/V VOYAGER III at the time of the incident;
- (b) A detailed description of the pre-departure safety orientation given to passengers at the start of every tour;

- (c) Whether during the safety orientation passengers are told not to carry cameras or other objects in their hands when they walk in the forward deck areas; and
 - (d) a detailed description of safety warnings or instructions of any kind given to the passengers by the captain or crew on the day of the incident regarding the possible effects on the vessel of the acceleration from harbor speed to cruising speed.
- A.14.
 - (a) The vessel is equipped with a public announcement system, which is located in the wheelhouse, and is capable of addressing all spaces on the vessel.
 - (b) The defendant refers the plaintiff to the Water Transportation Alternatives, Inc. Safety Announcement attached hereto as Exhibit "B."
 - (c) No, it is left to their discretion considering the prevailing conditions.
 - (d) Prior to the vessel departing on the date of the incident, Captain Dayle Sullivan-Taylor advised the passengers onboard the vessel of the possible weather and sea conditions. The defendant reserves to supplement this response as discovery progresses.
- Q.15. Regarding the bow areas of the M/V VOYAGER III please state the following:
 - (a) The composition of the deck in the area where the incident occurred including in your answer whether the deck was painted with paint and/or non-skid and the most recent date prior to the incident when the deck had last been painted and/or had non-skid applied;
 - (b) The point during a cruise, if ever, that the bow areas are made off-limits to passengers due to rough weather and the

identity of the person who makes that decision;

- (c) The M/V VOYAGER III's policy regarding when, and under what wind and sea conditions the bow area should be made off limits; and
- (d) a description of the steps taken by the crew of the M/V VOYAGER III to ensure that the M/V VOYAGER III's passengers would not ride on either bow during rough weather.

- A.15.
- (a) The fore deck in the area of the incident is constructed of aluminum and is coated with non-skid material, which is applied annually or as is necessary;
 - (b) The vessel's pulpits are closed to passengers during transit. The Captain will determine whether to open those areas to the passengers upon the observation of whales.
 - (c) The vessel's pulpits are closed to passengers during transit. See, (b) above.
 - (d) The vessel's pulpits are closed to passengers during transit. See, (b) above.

Q.16. Regarding organizations, professional societies, passenger vessel association and safety groups that the M/V VOYAGER III or those that own and operate her might have been a member of on or before the date of the incident:

- (a) List all such organizations of which the M/V VOYAGER III and/or those that own and operate her were a member;
- (b) State whether the M/V VOYAGER III and/or those that own and operate her were a member of the Passenger Vessel Association (PVA);
- (c) State whether the M/V VOYAGER III's shoreside employees and/or vessel operators

and crewmembers have, in any form, participated in the U.S. Coast Guard's Prevention Through People program.

A.16. (a) Passenger Vessel Association;

(b) Yes, and;

(c) No.

Q.17. Please state whether the defendants' agents, servants, or employees investigated the incident and/or inspected the area where the incident occurred. In your answer, kindly including the following:

(a) The identity of the person(s) who performed any such investigation;

(b) The identity of the person(s) who performed any such inspection;

(c) A detailed description of each such investigation and inspection including the results of each; and

(d) The identity of any written records of all such investigations and inspections.

A.17. (a) Thomas J. Muzyka and Kenneth M. Chiarello, Clinton and Muzyka, P.C., One Washington Mall, Boston, MA 02108 and Brian Morrissey, Marine Safety Consultants, Inc., 26 Water Street, Fairhaven, Massachusetts;

(b) Brian Morrissey, Marine Safety Consultants, Inc., 26 Water Street, Fairhaven, Massachusetts;

(c) The defendant objects to subpart (c) in that it seeks information protected by the attorney work-product and attorney-client privileges, and information obtained in anticipation of litigation.

(d) The defendant objects to subpart (d) in that it seeks information protected by the

attorney work-product and attorney-client privileges, and information obtained in anticipation of litigation.

Q.18. Please state whether the M/V VOYAGER III was experiencing any steering gear or engine problems on the day of the incident.

A.18. No.

Q.19. Please describe the steps taken by the M/V VOYAGER III's owner, captain, officers and/or shoreside managers, if any, to conduct a Job Hazard Analysis and/or risk assessment for passenger safety during rough weather.

A.19. The defendant objects to the portion of Interrogatory No. 19 seeking information regarding Job Hazard Analysis as it requests information not likely to lead to the discovery of admissible evidence and is protected by the self-critical analysis privilege. The plaintiff was a passenger not an employee at the time of the incident. Additionally, the defendant submits that the Captains that serve onboard the vessel are U.S. Coast Guard licensed.

Q.20. Please describe the training and/or instruction, if any, received by the M/V VOYAGER III's captain, officers and/or crewmembers regarding passenger safety including but not limited to during rough weather.

A.20. The defendant objects to Interrogatory No. 20 in that it is overly broad and vague. Without waiving its objection, the defendant states that its crewmembers receive training concerning passenger safety, which includes but is not limited to, instructing passengers during adverse weather conditions to be properly seated, use all available handrails, and to exercise reasonable care for their own safety under the circumstances.

Q.21. Please describe any post-accident policy changes or alterations made to operation and safety policies aboard the M/V VOYAGER III after the

incident regardless of whether such changes were a result of the incident.

A.21. There were no changes to policy.

Q.22. Regarding statements made by witnesses and/or persons having knowledge of the facts and/or circumstances concerning the incident, please identify the following:

- (a) All statements or memoranda of statements that were made by the plaintiffs concerning the incident;
- (b) All statements or memoranda of statements that were made by persons who witnessed the incident; and
- (c) All statements or memoranda of statements that were made by persons having knowledge of the facts and/or circumstances concerning the incident.

A.22. (a) None;

(b) Jeffrey Dunn;

(c) Captain David McDevitt, Captain Dayle Sullivan-Taylor, and Jason Kelly.

Q.23. If you claim to be a charitable organization, describe the manner in which any activity carried on by the M/V VOYAGER III, in its whale watching capacity, directly accomplished the charitable purposes of this defendant corporation.

A.23. Not applicable.

17

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS
____ DAY OF JUNE, 2006.

WATER TRANSPORTATION
ALTERNATIVES, INC.

By: William L. Walker
Its: Principal

OBJECTIONS BY:

Thomas J. Muzyka
BBO NO. 365540
Kenneth M. Chiarello
BBO NO. 639274
CLINTON & MUZYKA, P.C
One Washington Mall
Suite 1400
Boston, MA 02108
(617) 723-9165

Exhibit 5

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

WILLIAM STEFANIAK &
JANICE STEFANIAK,
Plaintiffs,

CIVIL ACTION
NO: 05-11465-MLW

vs.

VOYAGER III, LLC., WATER
TRANSPORTATION ALTERNATIVES, INC.,
NEW ENGLAND AQUARIUM CORPORATION, and
NEW ENGLAND AQUARIUM MARINE LIFE
CENTER, INC.,
Defendants.

WATER TRANSPORTATION ALTERNATIVES, INC.'S SUPPLEMENTAL
ANSWERS TO WILLIAM STEFANIAK'S INTERROGATORIES

Now come the defendant, Water Transportation
Alternatives, Inc., in the above-entitled action, by and
through its undersigned attorneys, Clinton & Muzyka, P.C.,
and submits herewith its Supplemental Answers to William
Stefaniak's Interrogatories as follows:

GENERAL OBJECTION

The defendant objects to all of the plaintiff's
Interrogatories insofar as they seek discovery of matters
which constitute privileged communications or materials
prepared in the anticipation of litigation or trial. By
furnishing an answer to any Interrogatory, the defendant
does not waive any of its general or specific objections
to that or any other Interrogatory. The defendant further

objects because the plaintiff's Interrogatories, including their subparts, exceed the amount allowed under the Local Rules for the U.S. District Court for the District of Massachusetts and the Federal Rules of Civil Procedure.

INTERROGATORY NO. 10

Please describe what happened on the date of the incident in full detail and chronological order for the period of time between the passengers boarding the M/V VOYAGER III and the vessel's return to port. In your answer, kindly including the following:

- (a) The name and position of the person who made the decision to set sail;
- (b) The medical aid, care and attention given by the defendant;
- (c) The medical aid, care and attention given by others ashore;
- (d) All regulations and safety precautions that were complied with; and
- (e) The name of each person from whom each piece of information given in this answer was drawn specifying who provided what.

RESPONSE NO. 10

The defendant objects to Interrogatory No. 10 in that it is overly broad and vague, unduly burdensome, and seeks information not likely to lead to the discovery of admissible evidence. Without waiving its objections, the defendant submits the following:

- (a) Captain David McDevitt:
- (b) The plaintiff was made comfortable and attended to while the vessel deviated to a closer port for transfer to an ambulance. He did not receive any "medical care" while onboard the vessel.

- (c) The defendant is not aware of the nature, extent, and scope of medical treatment that the plaintiff received ashore.
- (d) The defendant objects to subpart (d) in that it fails to identify any regulation and/or precaution and is overly broad, unduly burdensome, and not likely to lead to the discovery of admissible evidence. To the extent that the plaintiff identifies the regulation and/or precaution and limits the scope of subpart (d), the defendant will respond accordingly.
- (e) The defendant objects to subpart (e) in that it seeks information obtained in anticipation of litigation and protected by the attorney work-product and attorney-client privileges.

SUPPLEMENTAL RESPONSE NO. 10

- (e) Without waiving its objection, the defendant does not recall each and every crewmember's involvement with the plaintiff during the time the vessel deviated to a closer port for transfer to an ambulance.

INTERROGATORY NO. 12

Please describe all passenger slip and fall accidents *of any kind* that occurred during any M/V VOYAGER III operation during the two years prior to the incident and since the incident regardless of whether the injury gave rise to a lawsuit. Please be sure to include the following in your answer:

- (a) The identity of the injured person(s);
- (b) The identity of those witnessing such injuries, and;
- (c) The identity of those who have knowledge of such injuries.

RESPONSE NO. 12(a-c)

The defendant objects to Interrogatory No. 12 in that it seeks information not likely to lead to the discovery of admissible evidence. To the extent that the plaintiff limits the scope of Interrogatory No. 12 to incidents that occurred in the same area onboard the vessel, during similar weather conditions, and under similar navigating conditions as alleged in this claim by the plaintiff, the defendant will respond accordingly, otherwise it relies on its objection.

SUPPLEMENTAL RESPONSE NO. 12(a-c)

Without waiving its objection, the defendant submits it did not start to operate the vessel until the beginning of the 2003 whale watching season. The defendant is not aware of any personal injuries that occurred on the vessel's forepeak or pulpits from the time it started to operate the vessel until the date of the incident.

INTERROGATORY NO. 13

For a period of five years prior to the date of the incident, please identify each of the defendants' employees who were in charge of organizing, planning or supervising safety aboard the M/V VOYAGER III by setting forth, in addition to the definition above, the following:

- (a) A full and complete description of each identified person's duties; and
- (b) The period for which each was employed.

RESPONSE NO. 13(a&b)

The defendant objects to Interrogatory No. 13 in that it is overly broad and vague, unduly burdensome, and seeks information not likely to lead to the discovery of admissible evidence. Without waiving its objection, the defendant submits that all of the Captains that have served onboard the vessel were responsible for safety. The defendant further submits that William Walker and Michael McGurl were

responsible for overseeing the safe operation and management of the vessel at the time of the incident.

SUPPLEMENTAL RESPONSE NO. 13(a&b)

The defendant did not start operating the vessel until the beginning of the 2003 whale watching season. The Captains that served onboard the vessel from that time through the date of the incident, not including Dale Sullivan-Taylor and David McDevitt, are as follows: William Lyons, 24 Stafford Road, Hull, Massachusetts; Bryan Burton, 5 Holden Court, Boston, Massachusetts; Craig Bradford, 11 Tower Street, Jamaica Plain, Massachusetts, and; Earl Fagan, 22 Stoughton Street, Randolph, Massachusetts.

INTERROGATORY NO. 15

Regarding the bow areas of the M/V VOYAGER III please state the following:

- (a) The composition of the deck in the area where the incident occurred including in your answer whether the deck was painted with paint and/or non-skid and the most recent date prior to the incident when the deck had last been painted and/or had non-skid applied;
- (b) The point during a cruise, if ever, that the bow areas are made off-limits to passengers due to rough weather and the identity of the person who makes that decision;
- (c) The M/V VOYAGER III's policy regarding when, and under what wind and sea conditions the bow area should be made off limits; and
- (d) a description of the steps taken by the crew of the M/V VOYAGER III to ensure that the M/V VOYAGER III's passengers would not ride on either bow during rough weather.

RESPONSE NO. 15(a-d)

- (a) The fore deck in the area of the incident is constructed of aluminum and is coated with non-

skid material, which is applied annually or as is necessary;

- (b) The vessel's pulpits are closed to passengers during transit. The Captain will determine whether to open those areas to the passengers upon the observation of whales.
- (c) The vessel's pulpits are closed to passengers during transit. See, (b) above.
- (d) The vessel's pulpits are closed to passengers during transit. See, (b) above.

SUPPLMENTAL RESPONSE NO. 15

- (a) Non-skid was applied to the vessel's decks and pulpits in the Spring of 2004.

INTERROGATORY NO. 17

Please state whether the defendants' agents, servants, or employees investigated the incident and/or inspected the area where the incident occurred. In your answer, kindly including the following:

- (a) The identity of the person(s) who performed any such investigation;
- (b) The identity of the person(s) who performed any such inspection;
- (c) A detailed description of each such investigation and inspection including the results of each; and
- (d) The identity of any written records of all such investigations and inspections.

RESPONSE NO. 17

- (a) Thomas J. Muzyka and Kenneth M. Chiarello, Clinton and Muzyka, P.C., One Washington Mall, Boston, MA 02108 and Brian Morrissey, Marine Safety Consultants, Inc., 26 Water Street, Fairhaven, Massachusetts;

- (b) Brian Morrissey, Marine Safety Consultants, Inc., 26 Water Street, Fairhaven, Massachusetts;
- (c) The defendant objects to subpart (c) in that it seeks information protected by the attorney work-product and attorney-client privileges, and information obtained in anticipation of litigation.
- (d) The defendant objects to subpart (d) in that it seeks information protected by the attorney work-product and attorney-client privileges, and information obtained in anticipation of litigation.

SUPPLEMENTAL RESPONSE NO. 17

- (d) Without waiving its objection, correspondences from Marine Safety Consultants, Inc. dated June 21, 2006, February 7, 2005, October 3, 2005, and May 1, 2006, all of which are addressed to defense counsel and are privileged. Defense counsel also has within its possession several photographs obtained by Marine Safety Consultants, Inc. on July 22, 2004.

INTERROGATORY NO 19

Please describe the steps taken by the M/V VOYAGER III's owner, captain, officers and/or shoreside managers, if any, to conduct a Job Hazard Analysis and/or risk assessment for passenger safety during rough weather.

RESPONSE NO. 19

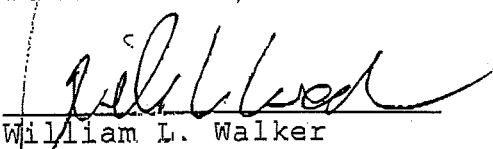
The defendant objects to the portion of Interrogatory No. 19 seeking information regarding Job Hazard Analysis as it requests information not likely to lead to the discovery of admissible evidence and is protected by the self-critical analysis privilege. The plaintiff was a passenger not an employee at the time of the incident. Additionally, the defendant submits that the Captains that serve onboard the vessel are U.S. Coast Guard licensed.

SUPPLEMENTAL RESPONSE NO. 19

During a whale watch excursion, the defendant is continuously assessing any risks to passengers by routinely inspecting the passenger areas and providing the appropriate instructions under the existing circumstances, and; by evaluating the forecasted and actual weather and sea conditions, and responding appropriately under the circumstances. The defendant reserves the right to supplement this response as discovery progresses.

U SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS
DAY OF SEPTEMBER, 2006.

WATER TRANSPORTATION
ALTERNATIVES, INC.


By: William L. Walker
Its: Principal

OBJECTIONS BY:

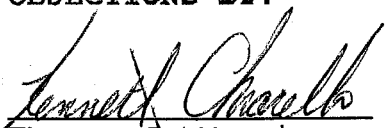

Thomas J. Muzyka
BBO NO. 365540
Kenneth M. Chiarello
BBO NO. 639274
CLINTON & MUZYKA, P.C
One Washington Mall
Suite 1400
Boston, MA 02108
(617) 723-9165

Exhibit 6

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

WILLIAM STEFANIAK and
JANICE STEFANIAK,
Plaintiffs,

CIVIL ACTION
NO: 05-11465-MLW

vs.

VOYAGER III, LLC., WATER
TRANSPORTATION ALTERNATIVES, INC.,
NEW ENGLAND AQUARIUM CORPORATION, and
NEW ENGLAND AQUARIUM MARINE LIFE
CENTER, INC.,
Defendants.

DEFENDANT, WATER TRANSPORTATION ALTERNATIVES, INC.'S,
RESPONSE TO PLAINTIFF, WILLIAM STEFANIAK'S, REQUEST FOR
PRODUCTION OF DOCUMENTS

Now comes the defendant, Water Transportation Alternatives, Inc., in the above-entitled action, by and through its undersigned attorneys, and hereby submits its Response to Plaintiff, William Stefaniak's, Request for Production of Documents.

GENERAL OBJECTION

The defendant objects to all of the plaintiff's Requests insofar as they seek discovery of matters which constitutes privileged communications or materials prepared in anticipation of litigation or trial. By furnishing a response to any request, the defendant does not waive any of its general or specific objections to that or any other Request.

REQUEST NO. 1

All documentation supportive of your claim to be a charitable organization including but not limited to proofs supportive of any tax-exempt status you may have under IRC § 501(c)(3) and/or based upon M.G.L. Ch. 231, § 85K.

RESPONSE NO. 1

Not applicable.

REQUEST NO. 2

All Coast Guard documentation related to the M/V VOYAGER III including but not limited to the Certificate of Documentation and the Certificate of Inspection.

RESPONSE NO. 2

The defendant objects to Request No. 2 in that it is overly broad and vague, and seeks documents not likely to lead to the discovery of admissible evidence. Without waiving its objection, the defendant refers the plaintiff to the U.S. Coast Guard "Report of Investigation Into the Circumstances Surrounding the Incident Involving M/V VOYAGER II - Passenger Injury on 07/14/04" and U.S. Coast Guard Form 2692, both of which are attached hereto as Exhibit "A."

REQUEST NO. 3

The nautical chart used at the time of the incident.

RESPONSE NO. 3

To the extent that the defendant still has the chart in its possession, it will be made available to the plaintiff during the vessel's onboard inspection.

REQUEST NO. 4

The M/V VOYAGER III's logbook for the day of the incident and the month preceding the incident.

RESPONSE NO. 4

Please see a copy of the vessel's Deck Log for the date of the incident attached hereto as Exhibit "B."

REQUEST NO. 5

All logs - both personal and official logs - created by the M/V VOYAGER III's operator(s) that mention, record, or otherwise note the time and details of the incident.

RESPONSE NO. 5

Please see a copy of the vessel's Deck Log for the date of the incident attached hereto as Exhibit "B."

REQUEST NO. 6

All M/V VOYAGER III safety policy statements and/or safety credo statements.

RESPONSE NO. 6

The defendant objects to Request No. 6 in that it is overly broad and vague, unduly burdensome, and seeks documents not likely to lead to the discovery of admissible evidence.

REQUEST NO. 7

All M/V VOYAGER III safety manuals and safety training manuals.

RESPONSE NO. 7

The defendant objects to Request No. 6 in that it is overly broad and vague, unduly burdensome, and seeks documents not likely to lead to the discovery of admissible evidence. Without waiving its objections, please see the Employee Policy Book, Operations Manual, and Security Plan attached hereto as Exhibit "C."

REQUEST NO. 8

All M/V VOYAGER III memorandums, internal reports, emails, notes, personal logs, ship's logs, letters and written documents of any kind that describe any aspect of the incident including but not limited to any mention of the weather and/or sea state conditions at the time of the incident.

RESPONSE NO. 8

Please see the Passenger Accident Report attached hereto as Exhibit "D."

REQUEST NO. 9

All operation and safety policies for the M/V VOYAGER III including but not limited to those operation and safety policies addressing the following areas:

- (a) Trip cancellation procedures during rough weather;
- (b) Securing forward weather decks during rough weather;
- (c) Boat-handling policies and procedures during rough weather;
- (d) Risk assessment and/or accident reporting procedures; and
- (e) Post-accident investigation and safety audit policies.

RESPONSE NO. 9

The defendant objects to Request No. 6 in that it is overly broad and vague, unduly burdensome, and seeks documents not likely to lead to the discovery of admissible evidence. Without waiving its objections, please see the Employee Policy Book, Operations Manual, and Security Plan attached hereto as Exhibit "C."

REQUEST NO. 10

All written materials - including but not limited to pamphlets, books, booklets, memos, letters, newsletters, posters, signs or notices - videos, photographs or diagrams regarding the procedures that were in place to prevent accidents and injuries including but not limited to the M/V VOYAGER III's policies on boat handling and passenger management during rough weather.

RESPONSE NO. 10

The defendant objects to Request No. 6 in that it is overly broad and vague, unduly burdensome, and seeks documents not likely to lead to the discovery of admissible evidence. Without waiving its objections, please see the Employee Policy Book, Operations Manual, and Security Plan attached hereto as Exhibit "C."

REQUEST NO. 11

All written materials - including but not limited to pamphlets, books, booklets, memos, letters newsletters, posters, signs or notices - videos, photographs or diagrams regarding any internal M/V VOYAGER III instructions, guidelines and/or warnings on navigation hazards and boat-handling techniques for the general geographical area of the incident.

RESPONSE NO. 11

The defendant objects to Request No. 6 in that it is overly broad and vague, unduly burdensome, and seeks documents not likely to lead to the discovery of admissible evidence. Without waiving its objections, please see the Employee Policy Book, Operations Manual, and Security Plan attached hereto as Exhibit "C."

REQUEST NO. 12

All minutes to each M/V VOYAGER III management meeting and each onboard safety meeting to date that have discussed rough water operation and passenger safety.

RESPONSE NO. 12

None.

REQUEST NO. 13

All written reports, document or records produced in conjunction with any U.S. Coast Guard safety inspection or investigation of the M/V VOYAGER III that took place within one year before and one year after the accident.

RESPONSE NO. 13

None.

REQUEST NO. 14

All M/V VOYAGER III written information or policies that describe the title, duty, role and responsibility of each individual working aboard the M/V VOYAGER III at the time of the incident.

RESPONSE NO. 14

The defendant objects to Request No. 6 in that it is overly broad and vague, unduly burdensome, and seeks documents not likely to lead to the discovery of admissible evidence. Without waiving its objections, please see the Employee Policy Book, Operations Manual, and Security Plan attached hereto as Exhibit "C."

REQUEST NO. 15

All merchant mariner's licenses and certificates for all M/V VOYAGER III officers and crewmembers aboard the M/V VOYAGER III at the time of the incident.

RESPONSE NO. 15

Please see copies of the crewmember's employment files attached hereto as Exhibit "E."

REQUEST NO. 16

All logbooks, timesheets and/or overtime records that document the M/V VOYAGER III captain's work and rest periods for the day of the incident and for the month preceding the incident.

RESPONSE NO. 16

The defendant objects to Request No. 17 in that it requests information not likely to lead to the discovery of admissible evidence. In his Answers to Interrogatories, the plaintiff does not allege any theory of liability based upon fatigue factors.

REQUEST NO. 17

All written materials - including but not limited to pamphlets, books, booklets, memos, letters, newsletters or notices - videos, photographs or diagrams regarding M/V VOYAGER III work hour policies, including policies and procedures for avoiding operator fatigue and overwork.

RESPONSE NO. 17

The defendant objects to Request No. 17 in that it requests information not likely to lead to the discovery of admissible evidence. In his Answers to Interrogatories, the plaintiff does not allege any theory of liability based upon fatigue factors.

REQUEST NO. 18

All written procedures in place at the time of the incident that attempted to insure that the crew of the M/V VOYAGER III was trained and/or supervised in compliance with all relevant rules and guidelines involving safe passenger vessel operation, regardless of the source of those rules and guidelines.

RESPONSE NO. 18

The defendant objects to Request No. 6 in that it is overly broad and vague, unduly burdensome, and seeks documents not likely to lead to the discovery of admissible evidence. Without waiving its objections,

please see the Employee Policy Book, Operations Manual, and Security Plan attached hereto as Exhibit "C" and the crewmembers' employment files attached hereto as Exhibit "E."

REQUEST NO. 19

All logs, records or transcripts of verbal communications between the M/V VOYAGER III and the M/V VOYAGER III's Shoreside management that mention, record or otherwise note the details of the incident.

RESPONSE NO. 19

None.

REQUEST NO. 20

A complete copy of all insurance policies related to this defendant that were in effect on the date of the incident.

RESPONSE NO. 20

The defendant is in the process of obtaining a copy of the policy affording coverage and will produce it upon receipt.

REQUEST NO. 21

A complete copy of all contracts in effect at the time of the incident that existed between this defendant and any other entity related to the M/V VOYAGER III and/or the M/V VOYAGER's whale watch activities.

RESPONSE NO. 21

The defendant is in the process of obtaining the Charter Party with Water Transportation Alternatives, Inc. and will produce same upon receipt. The defendant also refers the plaintiff to the Operating Agreement attached hereto as Exhibit "F."

REQUEST NO. 22

All statements or memoranda statements that were made by the plaintiffs concerning the incident.

RESPONSE NO. 22

None.

REQUEST NO. 23

All statements or memoranda of statements that were made by persons who witnessed the incident.

RESPONSE NO. 23

The defendant objects to Request No. 23 in that it seeks documents obtained in anticipation of litigation, and protected by the attorney work-product and attorney-client privileges.

REQUEST NO. 24

All statements or memoranda of statements that were made by persons having knowledge of the facts and/or circumstances concerning the incident.

RESPONSE NO. 24

The defendant objects to Request No. 24 in that it seeks documents obtained in anticipation of litigation, and protected by the attorney work-product and attorney-client privileges.

REQUEST NO. 25

All accident reports, investigation reports, Master's reports and all reports submitted to the Coast Guard that refer to or describe the incident including but not limited to Form CG-2692 (Report of Marine Accident, Injury or Death).

RESPONSE NO. 25

Please see the documents attached hereto as Exhibit "A."

REQUEST NO. 26

All documentation depicting and/or describing the course taken by the M/V VOYAGER III on the following whale watching voyages:

- (a) The voyage immediately preceding the voyage on which the incident occurred;
- (b) The voyage upon which the incident occurred, and;
- (c) The voyage immediately following the voyage upon which the incident occurred.

RESPONSE NO. 26

Please see a copy of the Vessel's Deck log attached hereto as Exhibit "B."

REQUEST NO. 27

A copy of the results of any drug screening conducted on the captain or crew as a result of the incident.

RESPONSE NO. 27

The defendant objects to Request No. 27 in that it requests information protected by the HIPPA regulations. Without waiving its objection, the defendant does not have any response documents.

REQUEST NO. 28

All documentation that lists the master and crew employed upon the vessel on the day of the incident.

RESPONSE NO. 28

Please see a copy of the vessel's Deck Log attached hereto as Exhibit "B."

REQUEST NO. 29

For a period of three years prior to the incident and up to the present, all correspondence between the defendant and each of the following:

- (a) the Boston Harbor Master's office, and;
- (b) the U.S. Coast Guard.

RESPONSE NO. 29

The defendant objects to Request No. 29 in that it is overly broad and vague, unduly burdensome, and seeks documents not likely to lead to the discovery of admissible evidence. Without waiving its objection, the defendant refers the plaintiff to the U.S. Coast Guard Form 2692 that it submitted to the U.S. Coast Guard in connection with the incident, which is attached hereto as Exhibit "A."

REQUEST NO. 30

All documentation regarding the most recent marine survey done prior to the date of the incident.

RESPONSE NO. 30

Please see the Condition & Value Survey Report prepared by Marine Safety Consultants, Inc. on April 18, 2003, which is attached hereto as Exhibit "G."

REQUEST NO. 31

Regarding business records that pertain to the voyage which the incident occurred please provide a copy of the ticket, a copy of all literature that was given or available to the passengers, the passenger list, all passenger releases and/or agreements and all ticket-related sales receipts.

RESPONSE NO. 31

The defendant objects to Request No. 31 in that it seeks documents not likely to lead to the discovery of admissible evidence. Without waiving its objection, the defendant refers the plaintiff to the brochure and ticket attached hereto as Exhibit "H."

REQUEST NO. 32

All documents referring to, describing, evidencing or constituting post-accident investigations of the incident.

RESPONSE NO. 32

The defendant objects to Request No. 23 in that it seeks documents obtained in anticipation of litigation, and protected by the attorney work-product and attorney-client privileges. Without waiving its objection, the defendant refers the plaintiff to the Passenger Accident Report attached hereto as Exhibit "D."

REQUEST NO. 33

All blueprints, plans, chalks, drawings, diagrams, maps and visual reproductions pertaining to the M,/V VOYAGER III.

RESPONSE NO. 33

The defendant objects to Request No. 33 in that it is overly broad and vague, and seeks documents not likely to lead to the discovery of admissible evidence. To the extent the plaintiff limits the scope of Request No. 33 and identifies the specific drawings requested, the defendant will respond accordingly.

REQUEST NO. 34

All correspondence between the vessel owner, its agents, servants, employees, or members of the crew and emergency responders and/or medical facilities ashore.

RESPONSE NO. 34

None.

REQUEST NO. 35

All employee handbooks, flyers, notices and memorandums issued to the master or crew for a period of three years prior to the incident that discuss:

- (a) Safety practices and procedures aboard the M/V VOYAGER III;
- (b) Safety responsibilities of the master and crew;
- (c) Job duties of the master and crew; and/or
- (d) Passenger access aboard the M/V VOYAGER III.

RESPONSE NO. 35

Please see the documents attached hereto as Exhibit "C."

REQUEST NO. 36

All advertising related to the M/V VOYAGER III and/or the whale watch activities of the M/V VOYAGER III including but not limited to print ads, flyers, fax blasts, electronic mailings, brochures, television ads, direct mailings and radio ads.

RESPONSE NO. 36

Please see the brochure attached hereto as Exhibit "H."

REQUEST NO. 37

All reports, memoranda, logs, notices, letters, diary entries, notes, journal entries and any other correspondence or document related to injuries occurring aboard the M/V VOYAGER III for a period of five years prior to the date of the incident and up to the present.

RESPONSE NO. 37

The defendant objects to Request No. 37 in that it is overly broad and vague, seeks documents not likely to lead to the discovery of admissible evidence, and

documents obtained in anticipation of litigation and protected by the attorney work-product and attorney-client privileges.

REQUEST NO. 38

All recorded imagery including but not limited to photographic reproductions, videos, slides and microfiche related to and/or depicting the plaintiff, William Stefaniak, and/or the general are of the incident.

RESPONSE NO. 38

The defendant objects to Request No. 38 in that it seeks photographs obtained in anticipation of litigation and protected by the attorney work-product doctrine. Without waiving its objections, the defendant does not have any photographs or videotapes of the plaintiff.

REQUEST NO. 39

All OSHA and U.S. Coast Guard citations, violation notices, or notices imposition of fine that the defendants have received for a period of five years prior to the date of the incident and up to the present.

RESPONSE NO. 39

None.

REQUEST NO. 40

The report, fee schedule, list of published work, history of testimony and Curriculum Vitae of each expert whom you anticipate calling as a witness at the trial of this action.

RESPONSE NO. 40

The defendant has not made a determination concerning the experts it intends to call at trial. The defendant will supplement this response and produce the documents it is required to disclose pursuant to

the Federal Rules of Civil Procedure and Local Rules at the conclusion of discovery.

REQUEST NO. 41

All documents produced in respond to any keeper of records depositions noticed by the defendant.

RESPONSE NO. 41

Not applicable.

REQUEST NO. 42

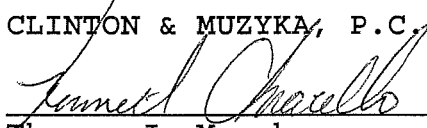
All employment record related to the captain and crew that were aboard the M/V VOYAGER III on the date of the incident including but not limited to resumes, Curriculum vitae, applications, drug screens, background checks and evaluations.

RESPONSE NO. 42

Please see the documents attached hereto as Exhibit "E."

By its attorneys,

CLINTON & MUZYKA, P.C.


Thomas J. Muzyka

BBO NO: 365540

Kenneth M. Chiarello

BBO NO: 639274

One Washington Mall
Suite 1400

Boston, MA 02108

(617) 723-9165

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each party by: hand, mail, overnight mail, facsimile, on 11-29-06

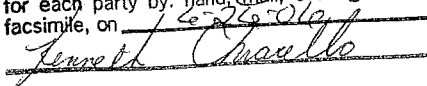

Kenneth M. Chiarello

Exhibit 7

Report of Investigation

I. INCIDENT BRIEF

On 7/14/04, a passenger aboard the M/V VOYAGER III slipped on the deck and injured his buttocks and back.

The M/V VOYAGER III departed Boston Harbor for a Whale Watching trip. The seas were approximately 2 feet in the harbor. As the vessel exited the harbor, the seas rose to 2 to 3 feet. A safety announcement was conducted prior to the departure warning passengers of the sea conditions. At approximately 1010, a crewmember observed passenger walking forward toward the bow on the port side. Shortly after, the M/V VOYAGER III encountered a swell approximately 4 feet. The passenger slipped backwards injuring his lower backside and back. The crew assisted the passenger as the master maneuvered the vessel and transited the vessel to Hull, Ma. Local paramedics were on scene when the vessel moored and administered first aid. The passenger was then transported to local hospital by ambulance for observation.

II. EXECUTIVE SUMMARY

Incident Summary

On 7/14/04, a passenger aboard the M/V VOYAGER III slipped on the deck and injured his buttocks and back.

The M/V VOYAGER III departed Boston Harbor for a Whale Watching trip. The seas were approximately 2 feet in the harbor. As the vessel exited the harbor, the seas rose to 2 to 3 feet. A safety announcement was conducted prior to the departure warning passengers of the sea conditions. At approximately 1010, a crewmember observed passenger walking forward toward the bow on the port side. Shortly after, the M/V VOYAGER III encountered a swell approximately 4 feet. The passenger slipped backwards injuring his lower backside and back. The crew assisted the passenger as the master maneuvered the vessel and transited the vessel to Hull, Ma. Local paramedics were on scene when the vessel moored and administered first aid. The passenger was then transported to local hospital by ambulance for observation.

Incident Involved: Marine Casualty, Reportable

Level of Investigation: Data Collection

IMO Classification: Routine

USCG Classification: Routine

Was this a Serious Marine Incident? Yes

Was a Marine Board Convened by Commandant? No

Personnel Casualty Summary

Total Missing = 0

Total Dead = 0

Exhibit 8

HARBOR EXPRESS

SHIFT LOG

DAY/DATE: Wed July 19, 2004

WEATHER: Sunny 60-50 S 15-20

VESSEL: Voyager #

AM/PM:

SEA CONDITIONS: Ch 3

ARRIVE	DEPART	OFF	ON	R/T	TOTALS	CAPTAIN: DAVID M. HARRIS
701	6640		0			SENIOR CREW: Jack Sullivan
720	700		75		75	BAR MANAGER:
806	730	76	0			CREW: J. DUNN
						CREW: M. Roche
836	800	0	11		11	CREW: A. Watson
843		11				CREW: J. Kelli
						MOD: R. Dunsdale
1017	1020	2				PORT ENGINE #1 #2 GEN
1050		46				HOURS: START 8:23 8:42 8:51
						FINISH 8:51 9:05 9:15
						ELAPSED 2 5 6
						STBD. ENGINE #3 #4 GEN
						HOURS: START 8:20 8:45 8:51
						FINISH 8:51 9:05 9:15
						ELAPSED 2 5 6
						PORT #1 ENGINE: OK ADD GAL
						OIL LEVEL
						GEAR OIL LEVEL
						WATER LEVEL
						START-UP TEMP.
						PORT #2 ENGINE: OK ADD GAL
						OIL LEVEL
						GEAR OIL LEVEL
						WATER LEVEL
						START-UP TEMP.
						STBD. #3 ENGINE: OK ADD GAL
						OIL LEVEL
						GEAR OIL LEVEL
						WATER LEVEL
						START-UP TEMP.
						STBD. #4 ENGINE: OK ADD GAL
						OIL LEVEL
						GEAR OIL LEVEL
						WATER LEVEL
						START-UP TEMP.
						PORT JETS: OK ADD QTS
						INBOARD HYDRAULIC OIL
						OUTBOARD HYDRAULIC OIL
						STBD. JETS: OK ADD QTS
						INBOARD HYDRAULIC OIL
						OUTBOARD HYDRAULIC OIL
						PORT GENERATOR: OK ADD QTS
						OIL LEVEL
						WATER LEVEL
						STBD. GENERATOR: OK ADD QTS

COMMENTS:

CHECK OFF:

DATE

TIME

WATER TANK FILLED

HOLDING TANKS PUMPED

10/20
A bit good swell and passengers landed on Deck

Exhibit 9



WTA POLICY BOOK (HARBOR EXPRESS)

No	HE-11
Issue	1
Date	December 11 1996
Page	4 of 6

ATTACHMENT C.

PASSENGER ACCIDENT REPORT

NAME OF SHIP Voyager III VOY. NO. _____ REPORT DATE 7/14/04
 CAPTAIN David McDevitt BOAT MANAGER _____
 DATE AND TIME OF INCIDENT 7/14/04 10AM
 WEATHER Cloudy, Rainy, rough seas LOCATION OF INCIDENT Saw of Boat
 PASSENGER NAME William Stefaniak
 ADDRESS 12 North St. Lenox, MA
 TELEPHONE (978) 343-1846
 DATE OF BIRTH 5/23/55 SOCIAL SECURITY NO. _____
 WAS PASSENGER OFFERED MEDICAL TREATMENT? Yes

PASSENGER'S RESPONSE, ACCEPTED X REFUSED _____

DESCRIPTION OF INCIDENT Passenger was taken to South Shore Hospital in Weymouth w/ back injury to lower left back. Took on a swell. Passenger was on lower (port side) swell. Tumbled passenger to floor of boat resulting in back injury.

WITNESS Jeff Dunn
 ADDRESS 20 Winterman Ave. Weymouth, MA
 TELEPHONE NO 781-237-4081

PERSON REPORTING INCIDENT Melissa Rocha (signature)
 JOB TITLE Crew DATE 7/14/04

Exhibit 10

Want to see where the really big animals



Welcome aboard the *Voyager III*! Enjoy the view as this high-speed catamaran whisks you safely to the whale feeding grounds just 30 miles east of Boston, where you'll glimpse the largest animals to ever live on Earth. Our destination is Stellwagen Bank, a busy feeding area for whales, dolphins, sea birds and other marine life. Interact with our naturalists to learn how they collect information on whales. Experience the hands-on navigation station. View the captain in action on the bridge.

Guaranteed Whale Sightings!

On this fun family voyage, *whale sightings are guaranteed!* In the rare event we do not see any whales, passengers will receive a complimentary New England Aquarium Whale Watch ticket. New England Aquarium is one of the leading marine conservation organizations in the world — let us show you what experience offers!

Exhibit 11



United States Coast Guard Maritime Information eXchange Port State Information eXchange



- ▶ CGMIX Home
- ▶ PSIX Home
- ▶ Vessel Search
- ▶ VSP Status
- ▶ FSP Status
- ▶ Contact Us
- ▶ Links
- ▶ FAQ/Help
- ▶ & Version 2.3

Printer Friendly Version

Vessel Results for Vessel: VOYAGER III

Vessel Information				
Vessel	VIN	Hull Number	Flag	Call-Sign
VOYAGER III	1077034		UNITED STATES	WCY9932
				Year Built
				1999

Vessel Particulars				
Service	Length	Breadth	Depth	IMO Number
Passenger (Inspected)	95.1 ft	30.3 ft	9.7 ft	N/A
				Alternate VINs
				1077034

Service Information		
Service Status	Out of Service Date	Last Removed from Service by
In Service	N/A	N/A

Tonnage Information			
Deadweight	Gross Tonnage(GRT)	Net Tonnage(NRT)	Gross Tonnage(GT ITC)
91.0	62.0		218.0
Cargo Authority			

Vessel Documents and Certifications			
Document	Agency	Date Issued	Expiration Date
Stability Letter	USCG	June 3, 1999	

System	SubSystem	Cause
Fire Fighting	Fixed Gas Fire Extinguishing System	Improper/Lack of Maintenance
Description of Deficiency		
Provide manual pull for fixed fire extinguisher for furnace room and indication light.		
Due Date	Resolved	Resolved Date
6/15/2005	True	6/15/2005
Resolution Description		
Deficiency Information		
System	SubSystem	Cause
Construction/Loadline	Penetrations	Unknown
Description of Deficiency		
Renew deck cable penetrations in the # 3 void space starboard.		
Due Date	Resolved	Resolved Date
6/15/2005	True	6/15/2005
Resolution Description		
Deficiency Information		
System	SubSystem	Cause
Fire Fighting	Fire Pumps	Improper/Lack of Maintenance
Description of Deficiency		
Renew fire pump pressure gauge in starboard pontoon engine room.		
Due Date	Resolved	Resolved Date
6/15/2005	True	6/15/2005
Resolution Description		
Deficiency Information		
System	SubSystem	Cause

Engineering	Fuel Oil Service System	Improper/Lack of Maintenance
Description of Deficiency		
Insulate fuel oil supply piping bracket in tank compartment.		
Due Date	Resolved	Resolved Date
6/15/2005	True	6/15/2005
Resolution Description		
Deficiency Information		
System	SubSystem	Cause
Engineering	Fuel Oil Storage/Transfer System	Improper/Lack of Maintenance
Description of Deficiency		
Repair fuel leak to starboard generator supply piping.		
Due Date	Resolved	Resolved Date
6/15/2005	True	6/15/2005
Resolution Description		
Deficiency Information		
System	SubSystem	Cause
Engineering	Reduction Gearing/Clutches	Improper/Lack of Maintenance
Description of Deficiency		
Repair transmission lube oil heat exchanger leaks for the aft main engine in the port pontoon.		
Due Date	Resolved	Resolved Date
6/15/2005	True	6/15/2005
Resolution Description		
Case Number	USCG Zone/Port	Incident Date
	Activity Type	Enforcement Description
		Nature of Incident

2319388	E PROVIDENCE, RI	March 25, 2005	Vessel Inspection/PSC		
Case Number	USCG Zone/Port	Incident Date	Activity Type	Enforcement Description	Nature of Incident
2319543	ST. PETERSBURG, FL	March 18, 2005	Vessel Inspection/PSC		
Deficiency Information					
System		SubSystem		Cause	
Documentation		Logs/Records			
Description of Deficiency					
PROVIDE CG-2692 TO OCMI TAMPA.					
Due Date		Resolved		Resolved Date	
3/23/2005		True		3/30/2005	
Resolution Description					
Deficiency Information					
System		SubSystem		Cause	
Construction/Loadline		Hull			
Description of Deficiency					
MAKE PERMANENT REPAIR TO PORT AFT SIDESHELL.					
Due Date		Resolved		Resolved Date	
3/23/2005		True		3/30/2005	
Resolution Description					
Deficiency Information					
USCG Zone/Port		Incident Date		Activity Type	
ST. PETERSBURG, FL		March 12, 2005		Vessel Inspection/PSC	
Case Number	Enforcement Description		Nature of Incident		
2309645					

Deficiency Information			
System	SubSystem	Cause	
Construction/Loadline	Hull		
Description of Deficiency			
Affect permanent repairs to port bow sideshell and affected structural members in way of damage, in accordance with repair proposal, to the satisfaction of cognizant OCMI.			
Due Date	Resolved	Resolved Date	
3/12/2005	True	3/17/2005	
Resolution Description			
A temp repair was made until dry dock.			
Deficiency Information			
System	SubSystem	Cause	
Construction/Loadline	Hull	Placed in Improper Service	
Description of Deficiency			
Prior to the completion of the next credit dry dock examination, submit plans for properly repairing PORT bow damaged area to the local attending USCG Marine Safety Office..			
Due Date	Resolved	Resolved Date	
3/22/2005	True	3/16/2005	
Resolution Description			
Vsl operator, Titan Cruise Lines, submitted repair proposal to OCMI.			
Deficiency Information			
System	SubSystem	Cause	
Construction/Loadline	Hull	Placed in Improper Service	
Description of Deficiency			
Prior to the completion of the next credit dry dock examination, upon receiving a			

stamped approved repair proposal from the local OCMI, crop out temporary repaired PORT bow area and renew following approved plans. Follow all local OCMI repair inspection sequences.					
Due Date		Resolved		Resolved Date	
3/22/2005		True		3/18/2005	
Resolution Description					
Deficiency Information					
System		SubSystem		Cause	
Documentation		Safety/Response Plans/Programs			
Description of Deficiency					
Provide repair proposal in writing to cognizant OCMI where repairs to sideshell will be made.					
Due Date		Resolved		Resolved Date	
3/12/2005		True		3/16/2005	
Resolution Description					
Deficiency Information					
System		SubSystem		Cause	
Documentation		Safety/Response Plans/Programs			
Description of Deficiency					
Provide structural plans of vessel to cognizant OCMI where repairs to vessel will be made.					
Due Date		Resolved		Resolved Date	
3/12/2005		True		3/16/2005	
Resolution Description					
Case Number	USCG Zone/Port	Incident Date	Activity Type	Enforcement Description	Nature of Incident
2337055	ST. PETERSBURG,	March 6, 2005	Incident Investigation		Marine Casualty, Reportable

FL							
Incident Information							
Role							
Involved in a Marine Casualty							
Case Number	USCG Zone/Port	Incident Date	Activity Type	Enforcement Description	Nature of Incident		
2303622	Washington, DC	March 4, 2005	Vessel Inspection/PSC				
Case Number	USCG Zone/Port	Incident Date	Activity Type	Enforcement Description	Nature of Incident		
2282082	ST. PETERSBURG, FL	January 27, 2005	Vessel Inspection/PSC				
Deficiency Information							
System	SubSystem	Cause					
Lifesaving	Inflatable Buoyant Apparatus	Placed in Improper Service					
Description of Deficiency							
Re-locate center inflatable life raft up for crew deployment as discussed.							
Due Date	Resolved	Resolved Date					
2/27/2005	True	3/10/2005					
Resolution Description							
Noted tag line attached to pelican hook allowing release and then launching of raft from aft deck.							
Case Number	USCG Zone/Port	Incident Date	Activity Type	Enforcement Description	Nature of Incident		
2238829	ST. PETERSBURG, FL	November 9, 2004	Vessel Inspection/PSC				

Deficiency Information			
System	SubSystem	Cause	
Deck/Cargo	Holds/Tanks	Improper/Lack of Maintenance	
Description of Deficiency			
Replace/repair gaskets on all deck hatches as discussed.			
Due Date	Resolved	Resolved Date	
12/10/2004	True	12/7/2004	
Resolution Description			
Deficiency Information			
System	SubSystem	Cause	
Operations/Management	Drills/Instruction	Improper/Lack of Maintenance	
Description of Deficiency			
Update/provide emergency evacuation plan IAW 46CFR116.520.			
Due Date	Resolved	Resolved Date	
11/24/2004	True	4/29/2005	
Resolution Description			
Deficiency Information			
System	SubSystem	Cause	
Operations/Management	Drills/Instruction	Improper/Lack of Maintenance	
Description of Deficiency			
Update/provide fire control plan IAW 46CFR116.530.			
Due Date	Resolved	Resolved Date	
5/20/2005	True	5/20/2005	
Resolution Description			

Deficiency Information			
System	SubSystem	Cause	
Engineering	Shafting/Propeller Arrangements	Improper/Lack of Maintenance	
Description of Deficiency			
Repair #1 & #3 reverse forced rod seal.			
Due Date	Resolved	Resolved Date	
12/10/2004	True	12/7/2004	
Resolution Description			
Deficiency Information			
System	SubSystem	Cause	
Engineering	Bilge Water Management System	Improper/Lack of Maintenance	
Description of Deficiency			
Provide bilge high level alarms for both PORT and STBD CO2 voids IAW 46CFR119.530 or, provide pictures showing that the through hull fittings have been welded shut as discussed.			
Due Date	Resolved	Resolved Date	
11/17/2004	True	12/7/2004	
Resolution Description			
Case Number	USCG Zone/Port	Incident Date	Activity Type
2241912	Boston, MA	October 26, 2004	Vessel Inspection/PSC
Case Number	USCG Zone/Port	Incident Date	Activity Type
2214089	Boston, MA	July 14, 2004	Incident Investigation
		Enforcement Description	Nature of Incident
			Marine Casualty, Reportable

Incident Information					
Role					
Involved in a Marine Casualty					
Case Number	USCG Zone/Port	Incident Date	Activity Type	Enforcement Description	Nature of Incident
2102557	BOSTON, MA	June 18, 2004	Vessel Inspection/PSC		
Case Number	USCG Zone/Port	Incident Date	Activity Type	Enforcement Description	Nature of Incident
2044346	BOSTON, MA	April 15, 2004	Vessel Inspection/PSC		
Deficiency Information					
System		SubSystem		Cause	
Pollution Prevention/Response		Prevention Equipment			
Description of Deficiency					
Properly lock out overboard discharge valve for MSD. LEGACY COMPONENT DESC: Standard Discharge Connection					
Due Date		Resolved		Resolved Date	
4/30/2004		True		4/30/2004	
Resolution Description					
Locked overboard discharge valves					
Deficiency Information					
System		SubSystem		Cause	
Engineering		Diesel Engine (propulsion-reduction gear)			
Description of Deficiency					
Properly replace the lagging on the pt fwd engine, where the exhaust is taken off of the engine. LEGACY COMPONENT DESC: Piping (exhaust)					
Due Date		Resolved		Resolved Date	

4/30/2004	True	4/30/2004
Resolution Description		
Replaced lagging on Pt. fwd engine.		
Deficiency Information		
System	SubSystem	Cause
Communications	Radio Communications	
Description of Deficiency		
Prove proper operation of the MF single side band radio. LEGACY COMPONENT DESC: Radiotelephone Transceiver (2-4 MHz)		
Due Date	Resolved	Resolved Date
4/30/2004	True	4/30/2004
Resolution Description		
Deficiency Information		
System	SubSystem	Cause
Fire Fighting	Fixed Fire Detection System	
Description of Deficiency		
Provide proof of fire detection (sensors) testing and proper operation. LEGACY COMPONENT DESC: Heat Detectors		
Due Date	Resolved	Resolved Date
4/30/2004	True	4/30/2004
Resolution Description		
Witnessed service report, and testing of manual call points, All SAT		
Deficiency Information		
System	SubSystem	Cause
Lifesaving	Lifejacket/PFD (General)	
Description of Deficiency		
Vessel is restricted to carrying 322 total POB, until proper number of life jackets are		

onboard. LEGACY COMPONENT DESC: Condition			
Due Date	Resolved	Resolved Date	
	True	4/30/2004	
Resolution Description			
Deficiency Information			
System	SubSystem	Cause	
Fire Fighting	Means of Escape		
Description of Deficiency			
Properly label the main deck, where the engine room escape hatches open. LEGACY COMPONENT DESC: Escape Route Signs			
Due Date	Resolved	Resolved Date	
4/30/2004	True	4/30/2004	
Resolution Description			
Witnessed proper labels of all escape hatches.			
Deficiency Information			
System	SubSystem	Cause	
Electrical	Lighting (service)		
Description of Deficiency			
Properly replace the cracked glass cover on the light fixture, pt side aft. LEGACY COMPONENT DESC: Lighting Fixture			
Due Date	Resolved	Resolved Date	
4/30/2004	True	4/30/2004	
Resolution Description			
Replaced Cracked glass on light fixture.			
Deficiency Information			
System	SubSystem	Cause	
Communications	Alarms/Indicators		

Description of Deficiency			
Prove proper operation of main deck fire alarm pull boxes. The boxes only sound the alarm in the pilot house and not throughout the vessel. LEGACY COMPONENT DESC: Fire Alarm			
Due Date	Resolved	Resolved Date	
4/30/2004	True	4/30/2004	
Resolution Description			
According to alarm technician this system is designed this way, and upon further review system is all SAT.			
Deficiency Information			
System	SubSystem	Cause	
Lifesaving	Visual Distress Signals (General)	Unknown	
Description of Deficiency			
Vessel is restricted to a limited coastwise route until lights are placed on all Lifejackets. LEGACY COMPONENT DESC: Quantity			
Due Date	Resolved	Resolved Date	
	True	4/30/2004	
Resolution Description			
Case Number	USCG Zone/Port	Incident Date	Activity Type
1996398	Washington, DC	January 28, 2004	Vessel Inspection/PSC
Case Number	USCG Zone/Port	Incident Date	Activity Type
1991384	BOSTON, MA	January 23, 2004	Vessel Inspection/PSC
Case Number	USCG Zone/Port	Incident Date	Activity Type
1787140	BOSTON, MA	April 30,	Vessel
			Nature of Incident
		Enforcement Description	Nature of Incident
		Enforcement Description	Nature of Incident
		Enforcement Description	Nature of Incident

	2003	Inspection/PSC
Deficiency Information		
System	SubSystem	Cause
Engineering	Fuel Oil Service System	
Description of Deficiency		
Free up reach rod for port fuel tank and provide proper spacing from the fuel tank.		
Due Date	Resolved	Resolved Date
5/7/2003	True	5/2/2003
Resolution Description		
Deficiency Information		
System	SubSystem	Cause
Engineering	Fuel Oil Storage/Transfer System	
Description of Deficiency		
Repipe fuel return line in way of broken bracket to starboard fuel tank.		
Due Date	Resolved	Resolved Date
5/7/2003	True	5/2/2003
Resolution Description		
Case Number	Incident Date	Activity Type
1758192	March 17, 2003	Vessel Inspection/PSC
USCG Zone/Port		Nature of Incident
STATEN ISLAND, NY		
Case Number	Incident Date	Activity Type
1746984	February 20, 2003	Enforcement
USCG Zone/Port		Nature of Incident
STATEN ISLAND, NY		
Incident Information		
Role		
Acknowledged Pollution Source		

Case Number	USCG Zone/Port	Incident Date	Activity Type	Enforcement Description	Nature of Incident
1739153	STATEN ISLAND, NY	January 23, 2003	Incident Investigation		Discharge of Oil
Incident Information					
Role					
Acknowledged Pollution Source					
Case Number	USCG Zone/Port	Incident Date	Activity Type	Enforcement Description	Nature of Incident
1735053	STATEN ISLAND, NY	January 20, 2003	Vessel Inspection/PSC		
Case Number	USCG Zone/Port	Incident Date	Activity Type	Enforcement Description	Nature of Incident
1683321	BOSTON, MA	October 2, 2002	Vessel Inspection/PSC		
Case Number	USCG Zone/Port	Incident Date	Activity Type	Enforcement Description	Nature of Incident
1608953	BOSTON, MA	April 25, 2002	Vessel Inspection/PSC		
Deficiency Information					
System	SubSystem	Cause			
Engineering	Bilge Water Management System				
Description of Deficiency					
Replace the strainer for the bilge suction in the starboard side jet room and replace the missing bolt for the bilge suction in the port side jet room.					
Due Date	Resolved	Resolved Date			Resolved Date
4/25/2002	True				4/25/2002
Resolution Description					
Completed prior to the completion of the inspection.					

Deficiency Information					
System		SubSystem		Cause	
Lifesaving		Lifejacket/PFD (General)			
Description of Deficiency					
Provide seven lifejacket lights for 5 adult and 2 children life preservers.					
Due Date		Resolved		Resolved Date	
4/25/2002		True		4/25/2002	
Resolution Description					
Corrected prior to the completion of the inspection.					
Case Number	USCG Zone/Port	Incident Date	Activity Type	Enforcement Description	Nature of Incident
68767	STATEN ISLAND, NY	October 30, 2001	Incident Investigation		Marine Casualty, Reportable
Incident Information					
Role					
Involved in a Marine Casualty					
Incident Information					
Role					
Involved in a Marine Casualty					

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Exhibit 12

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

WILLIAM STEFANIAK and *
JANICE STEFANIAK, *
Plaintiffs *

CIVIL ACTION NO. 05-11465-MLW

v. *

VOYAGER III, LLC, *
WATER TRANSPORTATION *
ALTERNATIVES, INC., *
NEW ENGLAND AQUARIUM *
CORPORATION, and *
NEW ENGLAND AQUARIUM *
MARINE LIFE CENTER, INC., *
Defendants. *

**PLAINTIFF, WILLIAM STEFANIAK'S, REQUEST FOR PRODUCTION OF
DOCUMENTS ADDRESSED TO DEFENDANT, WATER TRANSPORTATION
ALTERNATIVES, INC.**

The documents requested herein (or true copies of them) are to be produced at the law offices of **THE KAPLAN/BOND GROUP**, 88 Black Falcon Avenue, Suite 301, Boston, Massachusetts 02210 within 30 days from the date of this request.

The defendant may comply with this request by forwarding a copy of the requested documents to plaintiffs' counsel so long as such delivery is postmarked prior to the date called for in the preceding paragraph. If the documents requested are forwarded to the plaintiffs' attorney, they should be segregated and identified by the corresponding paragraph number of the request to which they respond.

If the defendant refuses to produce any of the requested documents on the grounds of privilege, work product or otherwise, the defendant must identify each such document by identifying its author, the author's address(es), the document's date, its general subject matter, the person(s) to whom copies were furnished and the exact basis for your objection. As to any claim that information contained in the requested document is confidential and/or requires redaction, the undersigned counsel is prepared to discuss a stipulation proving adequate protection of such information.

The word "statement" includes statements which are signed or unsigned, written, oral, recorded or transcribed.